Case Numbers: 2400627/2020 & others
1400830/2020 & others
See Schedule

EMPLOYMENT TRIBUNALS

Claimants: Mrs M Newby and others (see Schedule)
Mr M Paskins and others (see Schedule)

Respondents: Her Majesty's Revenue & Customs and others (see Schedule)

PRELIMINARY HEARING

Heard at: Manchester (public preliminary hearing by CVP)

On: 6-7, 9-10, 13 and 16-17 December 2021

Before: Judge Brian Doyle
Ms Anne Gilchrist
Mr John Murdie

Appearances

For the claimants: Mr Jack Mitchell, Counsel
For the respondents: Mr Adam Tolley, Queen's Counsel

RESERVED JUDGMENT

By reference to the sample cases, the respondents conceded that in their application of the Civil Service Compensation Scheme to the sample claimants, and because of the protected characteristic of age, they treated those sample claimants less favourably than the respondents treated or would treat others, within the meaning of section 13(1) of the Equality Act 2010. However, applying section 13(2) of the Act, the protected characteristic being age, the respondents did not discriminate against those sample claimants for the purposes of section 39(2) of the Act because the respondents have shown that their treatment of those sample claimants was a proportionate means of achieving a legitimate aim.

REASONS

Introduction

1. As explained by Mr Tolley QC in his opening written submissions – and the Tribunal adopts this introduction from those submissions – these claims raise a substantively complex point about alleged unjustifiable direct age discrimination under the provisions of the Civil Service Compensation Scheme ("the CSCS" or "the Scheme") in relation to the payment of compensation benefits in cases of early termination of employment on grounds of voluntary redundancy (and voluntary exit) and compulsory redundancy. Neither party suggests that there is any difference of principle between a termination on grounds of voluntary redundancy and one on grounds of voluntary exit. Subsequent references to voluntary redundancy should be taken also to include voluntary exit, unless the context suggests otherwise.

2. There are many such claims before the Employment Tribunal, supported by the PCS trade union ("PCS"). The large number of claims led to the making of a Presidential Direction on 30 March 2020 for their appropriate case management [998-1001]. Direct age discrimination, subject to the defence of justification and the application of time limits, is conceded. Following case management orders in the present proceedings, the issue of justification has been ordered to be addressed first (before any issue of jurisdiction based on time limits) and by reference to sample cases.

3. There are six such sample cases which arise for determination, two in each of the following types of case: (1) Compulsory redundancy at or above normal pension age on termination of employment (Ms Kathryn Kennedy and Ms Adina Clarkson); (2) Voluntary redundancy at or above normal pension age on termination of employment (Mr Peter Hopkins and Mr James Sweeney); and (3) Voluntary redundancy within 15 months of normal pension age on termination of employment (Ms Anne Perry and Mr Paul Conlon). This third category of case involves the application of a Taper provision in respect of the amount of compensation payable under the terms of the Scheme.

4. The sample claimants are represented by Thompsons Solicitors (instructed by PCS) and by Mr Jack Mitchell, Counsel. The respondents are represented by the Government Legal Department and by Mr Adam Tolley QC.

5. The Scheme has been in operation for nearly 50 years, having been set up originally under the Superannuation Act 1972. It has undergone several revisions and iterations, although the current version dates to 1988. It originally formed part of the Principal Civil Service Pension Scheme ("the PCSPS"), but since 1995 it has been contained in a separate document.

6. The CSCS operates in conjunction with, and alongside, the PCSPS, which is an occupational defined benefit scheme, which provides for the payment of pension benefits to civil servants. There are several different sections of the PCSPS, with different normal pension ages. The sections of the PCSPS engaged on the facts of these claims are the "Classic" scheme (of which five of the six sample claimants

were members) and the "Premium" scheme (of which Ms Kennedy was a member). Nothing turns on the difference between these versions of the PCSPS for present purposes. Both versions had a normal pension age of 60. A member of the PCSPS may take his or her full pension benefits at the normal pension age. It is open to him or her (from age 50) to take early payment of pension, subject to an actuarially calculated reduction for early receipt.

7. Civil servants who are dismissed on grounds of redundancy are eligible to be considered for a compensatory payment calculated in accordance with a formula based on length of service and age at the date of termination of employment. The maximum payment in relation to voluntary redundancy is 21 months' pay. In relation to compulsory redundancy, it is 12 months' pay. The claimants do not seek to challenge those maxima.

8. In relation to voluntary redundancy: (1) The award made under the CSCS to a person below normal pension age at the date of termination will, subject to the Taper provisions (see below), be calculated on the basis of one month's pay per year of service, up to the maximum of 21 months' pay; (2) The award to a person at or above normal pension age at the date of termination and who has at least six years' service will be six months' pay (or the equivalent of statutory redundancy pay, if higher).

9. There is a specific provision of the Scheme, which is in issue in these claims, whereby if the employee is within 15 months of normal pension age at the date of dismissal, any compensatory payment that he or she might otherwise receive is reduced by 1 month's pay for each month of service within that period of 15 months. This provision is known as "the Taper". By way of example, if an employee in the Classic scheme with more than 21 years' service is aged 59 (and so within 12 months of normal pension age) at the date of his or her dismissal on grounds of voluntary redundancy, any payment made will be limited to 18 months' pay (that is, it will be "tapered" by reference to the 3 months in question).

10. References are also made to "the Cap" (so-called), although this might be better understood as a minimum payment provision (the "Minimum Payment"). In short, instead of the Taper operating down to a nil payment at normal pension age (which is what happens in cases involving dismissal on grounds of efficiency), there is a minimum payment of 6 months' pay available to all employees with at least 6 years' service. If this is less than the amount which would have been produced by the application of the statutory redundancy pay formula, the amount payable is that higher amount.

11. In relation to compulsory redundancy: (1) The award made under the CSCS to a person below normal pension age at the date of termination will, subject to the Taper provisions (see below), be calculated based on 1 month's pay per year of service, up to the maximum of 12 months' pay. (2) The award to a person at or above normal pension age at the date of termination and who has at least 6 years' service will be 6 months' pay (or the equivalent of statutory redundancy pay if higher).

12. There is a similar form of taper provision in cases of compulsory redundancy, albeit which operates on different parameters. If the employee is within 6 months of normal pension age at the date of dismissal, any compensatory payment that he or she might otherwise receive is reduced by 1 month's pay for each month of service within that period of 6 months. By way of example, if an employee in the Classic scheme with more than 12 years' service is aged 59 and 9 months (and so within 3 months of normal pension age) at the date of his or her dismissal on grounds of compulsory redundancy, any payment made will be limited to 9 months' pay (that is, it will be "tapered" by reference to the 3 months in question). Although it had originally been intended that this type of case would be addressed in the present hearing, it has not been possible to find a suitable sample case. Accordingly, the situation involving the application of the Taper in a compulsory redundancy case does not arise for determination.

13. Four of the six sample claimants (Ms Kennedy, Ms Clarkson, Mr Hopkins and Mr Sweeney) were at or above normal pension age (60) at the date of termination of their employments. Ms Kennedy and Mr Hopkins were awarded CSCS compensation which, in view of their age at the date of termination, was calculated based on 6 months' pay. Ms Clarkson and Mr Sweeney were awarded CSCS compensation which, in view of their age at the date of termination and the fact that the amount of statutory redundancy pay would have been greater than 6 months' pay, was calculated in accordance with the statutory redundancy underpin. It appears (at least, to the respondents) that their case is that, based on their respective lengths of service, they should have received the maximum amount of compensation (21 months' pay in the voluntary redundancy cases and 12 months' pay in the compulsory redundancy cases).

14. Two of the sample claimants (Ms Perry and Mr Conlon) were aged between 58 years 9 months and normal pension age (60) at the date of termination of their employments. The amounts of their respective payments were therefore reduced by the Taper, as follows. (1) Ms Perry was aged 59 years and 6 months, with nearly 40 years' service. Her CSCS payment was therefore tapered to 12 months' pay (21 months' maximum award reduced by 9 months of tapering). Because Ms Perry's annual pay was below £23,000, it was treated as being this higher figure for the purpose of the calculation of CSCS compensation. This feature of the Scheme is not challenged. (2) Mr Conlon was aged 59 years and 1 month, with more than 34 years' service. His CSCS payment was therefore tapered to 17 months' pay (21 months' maximum award reduced by 4 months of tapering).

15. All of the sample claimants received annual pension payments under the PCSPS (ranging from £6,271.21 in Ms Kennedy's case to £18,519.48 in Mr Hopkins' case). In addition, except for Ms Kennedy, the sample claimants received pension lump sum payments under the PCSPS (ranging from £30,678.30 in Ms Perry's case to £78,436.85 in Ms Clarkson's case). Ms Kennedy was a member of the Premium scheme and could elect to receive a lump sum in return for a reduced pension, but she did not exercise that election.

16. There is no dispute in these cases that the reduction of the CSCS compensation payment made to the sample claimants involved direct age discrimination. The issue is whether the relevant provisions of the Scheme can be justified as a

proportionate means of achieving a legitimate aim. In short, the respondents' case as to justification is that the Taper and Minimum Payment provisions are a proportionate means of achieving the following legitimate aims.

17. (1) Providing appropriate and reasonable compensation to employees who are dismissed on grounds of redundancy (considering that persons in Crown employment have no statutory right to a redundancy payment). (2) Bridging the gap (if any) between the date of dismissal and normal pension age, at which date the employee is entitled to receive full pension (and lump sum). (3) Avoiding a "cliff-edge" effect at normal pension age, whereby compensation might be paid in full up to that age, and then reduced thereafter to the minimum compensation of 6 months' pay (subject to 6 years' service). (4) Ensuring that all employees dismissed on grounds of redundancy receive a substantial minimum amount of 6 months' pay (subject to 6 years' service) or the equivalent amount to statutory redundancy pay, whichever is the greater. (5) Allocating necessarily limited public funds in a fair and equitable manner amongst eligible employees. (6) Appropriately accounting for length of service, while maintaining equity as between those close to normal pension age and those at or beyond it, as well as between older and younger employees more generally. (7) Applying a clear and transparent set of rules in the interests of efficient administration.

18. The respondents' case is that the Taper is carefully calibrated to reduce the amount of compensation payable in accordance with proximity of the employee to normal pension age. The extent of any loss of opportunity for an employee to continue to receive earnings is bound to be different, it is said, between a person aged (say) 58 and 9 months at the date of dismissal and a person aged (say) 65. The Taper seeks proportionately to take such differences into account by reducing the compensation payable by reference to each additional month of proximity from the commencement of its operation (58 and 9 months in relation to voluntary redundancy; and 59 and 6 months in relation to compulsory redundancy) to normal pension age. The Minimum Payment seeks to ensure that every employee dismissed on grounds of redundancy receives at least some substantial payment by way of compensation.

19. These provisions do not operate by reference to the specific circumstances of any individual. A person whose loss of opportunity to continue earning might be reduced – for example, by ill-health – does not receive less by way of compensation. Nor is any attempt made to distinguish between cases where individuals may have different prospects of obtaining alternative employment outside the Civil Service. There is no need to establish that the dismissal was in any respect unfair. In essence, the Taper and Minimum Payment operate as part of an overall package which makes relatively generous provision for employees close to normal pension age, who lose their employment on grounds of redundancy and who would not otherwise be able to claim compensation.

Composition of the Tribunal

20. Some care had been taken when empanelling this Tribunal to ensure that none of its three members had any possible interest in its outcome, actual or apparent. Unfortunately, through no fault of his own, one of the original members (Mr P

Dobson, employee member) discovered the appearance of a conflict when reading in on the first day of the hearing. Having heard the parties' submissions in relation to that apparent conflict, the Tribunal agreed that Mr Dobson would recuse himself and he would play no further part in the hearing.

21. The parties did not consent to the judge sitting alone or with the remaining member, although there was no objection to the judge and that member continuing to hear the case. The hearing adjourned on the second day, without evidence having been heard, and the Tribunal administration was asked to find a substitute member without any apparent or actual conflict. That member (Mr J Murdie) read in on the day between the second and third day. The hearing then proceeded as intended.

Materials before the Tribunal

22. There is one documents bundle and a separate witness statements bundle. References to the documents bundle are given in square brackets. References to the witness statements are provided in the form [surname of witness/paragraph number].

23. An agreed list of issues was annexed to the Tribunal's Order sent on 10 March 2021 [126]. As noted above, it has proved impossible to find a suitable case falling within sub-category (b) (that is, a person dismissed based on compulsory redundancy and affected by the operation of the Taper). It will therefore not be possible for this type of case to be determined by the Tribunal at this Preliminary Hearing.

24. It was agreed, and approved by the Tribunal, that the issues should be resolved by reference to sample cases. The relevant cases, by reference to the list of issues, are as follows. (1) Category (a) – compulsory redundancy at/above normal pension age: Ms Kathryn Kennedy and Ms Adina Clarkson. (2) Category (c) – voluntary redundancy/voluntary exit at/above normal pension age: Mr Peter Hopkins and Mr James Sweeney. (3) Category (d) – voluntary redundancy/voluntary exit within 15 months of normal pension age (that is, affected by the Taper): Ms Anne Perry and Mr Paul Conlon. The documents that relate to their individual cases and circumstances are at [680-997].

25. As a result, there are 9 witnesses in total, and witness statements were before the Tribunal in respect of those witnesses. There are 8 witnesses for the claimants, namely: (1) Mr Geoff Lewtas, a Senior National Officer of PCS; (2) Mr Paul O'Connor, Head of Bargaining of PCS; (3) Mr Peter Hopkins; (4) Ms Anne Perry; (5) Mr James Sweeney; (6) Mr Paul Conlon; (7) Ms Kathryn Kennedy; and (8) Ms Adina Clarkson. The single witness for the respondents is (9) Mr Peter Spain, who is the Head of the Pensions Policy and Technical Team in the Civil Service and Royal Mail Directorate within the Cabinet Office.

26. There was a statement of agreed facts, incorporated below.

27. The key source documents appear to the Tribunal to be: (1) The Civil Service Compensation Scheme Rules (1995 as amended) [179]; (2) *Fairness for All:*

Proposals for the Reform of the Civil Service Compensation Scheme (Cabinet Office, 31 July 2009) [283]; (3) *Consultation on Reform of the Civil Service Compensation Scheme* (Cabinet Office, 8 February 2016) [1002]; (4) *Equality Analysis: Civil Service Compensation Scheme Reform* (Cabinet Office, June 2016) [1022]; (5) HMRC Intranet Guidance on Exits [627]; (6) *Civil Service Compensation Scheme: Response to Consultation on Proposed Reform of the Civil Service Compensation Scheme* (Cabinet Office, 26 September 2016) [1035]; *Consultation on Reform of the Civil Service Compensation Scheme* (Cabinet Office, 25 September 2017) [322]; and *Public service pension schemes: changes to the transitional arrangements to the 2015 schemes: Government response to consultation* (HM Treasury, February 2021) [350].

Preliminary matters

28. Mr Tolley QC raised with the Tribunal questions about the order of presentation and burden of proof. His view was that, given that the only issue at this hearing is justification, on which the respondents bear the burden of proof, the respondents should present their evidence first, followed by the claimants. In relation to closing submissions, the claimants should go first, with the respondents providing their submissions in response.

29. At the last case management hearing on 5 November 2021, it had been agreed between the parties and with the Tribunal that the claimants would give evidence first, followed by the respondents. Having considered what counsel wished to say about this preliminary matter, the Tribunal confirmed those previously agreed arrangements. A hearing timetable had been previously agreed and the Tribunal resolved to adhere to that timetable.

30. As to the mode of hearing, by letter dated 2 December 2021, the Tribunal (by the Regional Employment Judge) communicated its decision that the hearing should be conducted wholly by CVP. The Respondents invited the Tribunal to take appropriate measures to ensure that, to the extent legitimately possible, the circumstances in which the witnesses give evidence are as controlled as they would be in an in-person hearing. It is said that this may be of particular importance in the present case, in which the statements of Mr Lewtas and Mr O'Connor contain sections which appear to be based on documents, but without clear identification of or reference to the documents themselves (which it is said have not been disclosed by or on behalf of the claimants).

31. The first day of hearing was largely a reading day. The parties provided the Tribunal with a reading list. That reading list included the written opening submissions of both parties. As such submissions may have tended to shape the Tribunal's approach to its reading and thereafter to the live evidence, the Tribunal considers it appropriate to reproduce those opening submissions here.

Respondents' opening submissions

32. In written opening submissions, part of which has been incorporated into the Tribunal's Introduction above, Mr Tolley QC directed the Tribunal to the statutory foundations of the CSCS and the PCSPS in sections 1 and 2 of the

Superannuation Act 1972. In relation to the CSCS, section 2(2) contains the power is to make provision for the payment of "pensions, allowances or gratuities by way of compensation" to persons who suffer "loss of office or employment" in prescribed circumstances.

33. The effect of this section was summarised by Sales J (as he then was) in *R (Public and Commercial Services Union) v Minister for the Civil Service* [2010] EWHC 1027, [2010] ICR 1198 at paragraphs 35-36 as authorising the Minister to make provision for payments as compensation for persons who suffer loss of office or employment. The compensatory nature of the Scheme should therefore be seen as an essential part of its statutory architecture. In addition, the predecessor schemes and the schemes made under the 1972 Act involved the integration of compensation rights and pension rights: see paragraphs 45-46. The CSCS can only properly be understood in light of the PCSPS (and vice versa).

34. Mr Tolley QC referred the Tribunal to [Spain/6-28] for a detailed explanation of the background to the CSCS and its present terms. He provided an essential summary, with some additional comment by way of submission where appropriate, as follows.

35. The CSCS is a non-contributory scheme. Employees do not make any payment to their employer (or suffer any deduction from their earnings) in order to be entitled to its benefits. Crown employees do not have a statutory right to a redundancy payment under the Employment Rights Act 1996.

36. The applicable part of the CSCS is section 12 – "2010 Compensation Terms" [237]. Part 12.1 [237-244] contains the relevant definitions, of which the most material are the "Voluntary Departure Maximum" (rule 12.1.5), the "Compulsory Departure Maximum" (rule 12.1.7), the "Tapering Maximum" and the "Tapering Sum" (rule 12.1.9). Part 12.4 [254-258] sets out the voluntary redundancy terms and Part 12.5 does the same in relation to compulsory redundancy [259].

37. Mr Tolley QC invited the Tribunal to note several specific features within these provisions as follows.

38. (1) It does not purport to provide "perfect" compensation in respect of the entirety of the potential loss of the employee. Even if (say) he or she were dismissed at age 55, there would be no question of compensation amounting to 5 or more years' pay. The maximum payment is 21 months' pensionable earnings in the case of voluntary redundancy and 12 months' pensionable earnings in the case of compulsory redundancy. As already noted, the claimants do not challenge the application of these maxima. (2) The operative criteria for determining the amount of any payment are the length of service of the employee in question and his or her monthly pay. In general terms, the greater the length of service, the greater will be the amount of the compensatory payment. Length of service is self-evidently a factor which increases in line with age. (3) However, this is of course subject to a tapering off of the amount payable as the employee passes a certain age (58 years 9 months in relation to voluntary redundancy and 59 years 6 months in relation to compulsory redundancy) and by reference to his or her increasing proximity to normal pension age. (4) There is no differentiation based on any individual's

prospects of obtaining alternative employment. (5) No refund of the compensation payment (or any part) is required to be given if an employee does obtain alternative employment outside the Civil Service.

39. As for the PCSPS, there are several different sections of the PCSPS, depending on when individuals were first employed in the Civil Service. The relevant schemes for the purpose of the present case are Classic (all the sample claimants save Ms Kennedy) and Premium (Ms Kennedy). Both are defined benefit schemes based on final pensionable earnings. Members of the Classic section are automatically entitled to a tax-free lump sum. Members of the Premium section have an option to commute part of the annual pension into a tax-free lump sum (£12 of lump sum per £1 of annual pension given up). Members of the Classic section can opt to increase their lump sum in the same way.

40. The normal pension age under both the Classic and Premium schemes is 60. It is possible to retire at any age from 50, but the effect of such early retirement is that the amount of pension will be subject to actuarial reduction for early payment. There is no such reduction from age 60 onwards. Where the reduction applies, it is possible to make a payment to eliminate the reduction, which is known as "actuarial reduction buy out" ("ARBO"). In cases of voluntary redundancy (and voluntary exit, at the employer's discretion), the employer will top up the amount of compensation to meet the cost of ARBO. The amount of compensation payable will always be sufficient to meet the cost of ARBO, as the figures referred to at [Spain/133] demonstrate. There is a correlation between the ARBO costs and the compensation payable, in the sense that both amounts increase in tandem. It is therefore open to the individual to use his or her efficiency compensation towards the cost of actuarial reduction buy out and thereby to receive early payment in full of his annual pension/lump sum.

41. Mr Tolley QC then took the Tribunal to the statutory provisions on age discrimination. The present claim is brought pursuant to section 13(1) of the Equality Act 2010 (the "EqA"). The relevant protected characteristic is age. However, unlike other forms of direct discrimination, discrimination because of age may be justified. See section 13(2). If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim. It is this provision which gives rise to the issue here.

42. The respondents' case is that they can show that the application of the Taper (the relevant "treatment" of Ms Perry and Mr Conlon) and the making of the Minimum Payment (the relevant "treatment" of Ms Kennedy, Ms Clarkson, Mr Hopkins and Mr Sweeney) is a proportionate means of achieving a legitimate aim (or a number of legitimate aims). This test is often described as "objective justification".

43. The respondents rely on the leading authority on the meaning of (what is now) section 13(2) EqA, namely, *Seldon v Clarkson Wright & Jakes* [2012] UKSC 16, [2012] ICR 716. The key principles are said to be as follows. (1) The types of aim which are capable of being treated as legitimate are those which involve social policy objectives of a public interest nature, as opposed to purely individual reasons particular to the employer's situation. (2) The aim need not have been

articulated, or even realised, at the time when the measure was first adopted. It can be a rationalisation after the event. (3) The means chosen to achieve the aim must be both appropriate and reasonably necessary. The means should be carefully scrutinised in the context of the business concerned to see whether they do meet the objective and that there are no other, less discriminatory, measures which would do so. (4) Where it is justified to have a general rule, then the existence of that rule will usually justify the treatment which results from it.

44. Mr Tolley QC referred to *Seldon* was applied by the Court of Appeal in the more recent case of *Lord Chancellor v McCloud* [2018] EWCA Civ 2844, [2019] ICR 1489. It reiterated the well-known point that the state or the government (if it is the employer) must be accorded some margin of discretion in relation to both aims and means – "governments must be able to govern". But it is of course for the Tribunal in any particular case to determine what the appropriate margin is.

45. Issues of objective justification have arisen frequently in the particular contexts of contractual redundancy arrangements and occupational pension schemes. There are a series of relevant decisions, some decided before *Seldon* and others after, but all said to be of valid authority. The Tribunal would be referred to the following cases: *R (Carson) v Secretary of State for Work and Pensions* [2005] UKHL 36, [2006] 1 AC 173; *MacCulloch v Imperial Chemical Industries plc* [2008] ICR 1334; *Loxley v BAE Systems Land Systems (Munitions & Ordnance) Ltd* [2008] ICR 1348; *Kraft Foods UK Ltd v Hastie* [2010] ICR 1355; *Lockwood v Department of Work and Pensions* [2013] EWCA Civ 1195, [2014] ICR 1257; and *BAE Systems (Operations) Ltd v McDowell* [2018] ICR 214.

46. Mr Tolley QC summarised the following propositions as may be derived from the authorities. (1) The use of age as a factor in decision-making is not intrinsically demeaning. While it requires rational justification, it is not subject to the same strictness of scrutiny that would apply to certain other forms of discrimination. In relation to concepts such as a normal retirement age (or a normal pension age), it is necessary that a line has to be drawn somewhere: *Carson* [41], [58]-[60]. (2) The key question is whether the discriminatory scheme is a proportionate means of achieving a legitimate aim: *Lockwood* [46]. (3) A summary of the general principles as to justification is as follows – *MacCulloch* [10]: (a) The burden of proof is on the respondent to establish justification. (b) The measures adopted must correspond to a real need, be appropriate with a view to achieving the objectives pursued and reasonably necessary to that end. (c) An objective balance should be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification. (d) It is for the tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the measure and make its own assessment as to whether the former outweigh the latter. (4) In general, tapering provisions may be very readily justified, as necessary to ensure equity between those close to retirement and those in retirement receiving pensions. However, the question whether justification is in fact made will of course depend on the nature of the schemes in question: *Loxley* [39]. (5) It is relevant to take into account any agreement with trade unions, as well as the fact of the timing at which the employee is entitled to take his pension: *Loxley* [42]. (6) There is a need for critical appraisal by the Tribunal to ensure that no "traditional assumptions" relating to age

have influenced the employer: *Loxley* [43]. (7) There is, depending on the facts, a potential justification on the basis that employees who lose out under the terms of one scheme because of an age-related provision are sufficiently compensated by reference to their pension entitlement: *Hastie* [11(b)]. (8) In considering whether any particular aspect of the scheme is justifiable, it is necessary for the Tribunal to focus on the scheme (or schemes) in question as a whole, in order to decide whether it was a proportionate way of achieving a number of different (but all legitimate) aims, some of which may be in tension: *MacDowell* [60]-[65].

47. In the context of pension schemes, submitted Mr Tolley QC, age is a permissible basis for rules, practices, actions or decisions, pursuant to section 61(8) EqA and the Equality Act (Age Exceptions for Pension Schemes Order 2010 (SI 2010/2133) ("the Age Exceptions Order"). The provisions of the Age Exceptions Order are particularly detailed, although an obvious point by way of example can be seen in paragraph 10 of Schedule 1, which covers the case of a minimum age for payment of or entitlement to a particular age-related benefit on the grounds of redundancy where it is enhanced in various ways, including by not making any actuarial reduction for early retirement. Similarly, paragraph 11 of Schedule 1 addresses the case of an "early retirement pivot age", which is defined to mean, in relation to an age-related benefit provided under a scheme, an age specified in the scheme rules as the earliest age at which entitlement arises without the employer's consent and without an actuarial reduction. Put simply, this permits a pension scheme to operate a normal pension age.

48. As for the defence of justification, and subject to final submissions, Mr Tolley QC summarised the main points in support of the respondents' case on justification of the Taper and the Minimum Payment provisions as follows.

49. First, it is important to keep in mind the nature of the challenge raised by the claimants' claim. Ms Perry and Mr Conlon seek to disapply the Taper entirely, so that (for example) an employee dismissed on redundancy grounds at age 59 and 364 days should be treated in precisely the same way as an employee dismissed on such grounds at age 58 and 9 months. Indeed, when one takes into account the case advanced on behalf of the other sample claimants, it must follow that the claimants' case overall is that the same approach should be followed for an employee dismissed – at any age – after the age of 60. Accordingly, their case involves no recognition being given to the reality of the distinction, in terms of the extent of the lost opportunity to continue earning from employment, between the cases of employees dismissed at different ages. In this context, it is contended, it may also be noted that the claimants do not seek to suggest that there is a more proportionate way of achieving the legitimate aims of the CSCS. While there is no formal burden of proof on the claimants in relation to the issue of justification, it is nonetheless relevant to bear in mind that their case involves no attempt to formulate any provision which is said to be more proportionate. Rather, it involves the effective deletion, without replacement, of the rules on Taper and Minimum Payment.

50. Secondly, it is both necessary and important for the Tribunal to keep in mind the essential basis of the CSCS as a means of providing compensation to employees for loss of employment and its close integration with the provisions of the PCSPS

as to pensions. As to the first of those points, if one were to ask – in relation to the difference between an employee dismissed on redundancy grounds at (say) age 55 and an employee so dismissed at age 59 and 11 months, but with the same length of service – why the latter employee should receive the same amount of compensation as the former, there would be no sensible answer. To adopt the language of Underhill P (as he then was) in *Hastie* [16(2)], the question is what would the employee in the latter case be receiving such compensation for? In relation to the second of those points, it is plainly both relevant and significant to take into account the availability of pension benefits under the PCSPS, including the possibility of a large lump sum payment. This is true both in those cases where the employee is (at age 60) entitled immediately to full payment of pension, and those cases where he or she is relatively close to that point (when he or she may take immediate payment of his or her pension, subject to actuarial reduction for early receipt). It is of course open to any employee to use the amount of compensation payable towards achieving an actuarial reduction buy out, and thereby to receive full and unreduced payment of his pension. However, on the claimants' case, one should not take any account of the availability of pension benefits under the PCSPS. This approach appears to involve a complete disregard of the compensatory premise of the CSCS and its integration with the PSCPS. The ultimate reality of the claimants' case appears to involve a largely unprincipled contention in favour of higher payments under the CSCS and the same pension benefits to be paid under the PCSPS.

51. Thirdly, as the evidence of Mr Spain (and the statistical analysis annexed to and explained in his witness statement) makes clear, the effect of the Taper is to even out the proportion between the amount of benefits payable under the CSCS and PCSPS and the potential amount of lost earnings at each age. Without the application of the Taper, there would be a far greater range of payments, in proportionate terms, with older employees benefitting disproportionately (and increasingly so) by comparison with younger employees.

52. Fourthly, it should be kept clearly in mind that the payment of compensation in redundancy cases is by way of gratuitous allocation of resources to a dismissed employee. There is no question of him having "paid for" the benefit by means of deductions from salary. Nor would he be entitled to compensation as a matter of law; payment is made even though the dismissal is fair and even though civil servants are not entitled to a statutory redundancy payment.

53. Fifthly, the Taper operates proportionately (in terms of both principle and arithmetic), by reducing the amount payable on a month-by-month basis. It achieves clear and readily comprehensible, if broad-based distinctions, between employees based on proximity to normal pension age. It would not be realistic or practicable to make individualised decisions based on the facts of each specific individual case, seeking to work out how long the individual was likely to go on working in the Civil Service if not for her or his dismissal or what may be her or his prospects of obtaining alternative employment.

54. Sixthly, the Minimum Payment provisions operate as a form of concession to employees at or above normal pension age who might otherwise receive nothing by way of compensation in view of their entitlement to immediate and unreduced

pension, as well as a pension lump sum. In effect, every employee is treated as having some potential loss of earnings because of a redundancy dismissal after normal pension age.

55. Seventhly, the funds available for the payment of such benefits are necessarily limited. Decisions must be made as to the fair allocation of resources amongst eligible employees, including those of all ages. It would in principle be possible to equalise down, such that no compensation at all was payable to anyone who lost their employment on redundancy grounds. But the fact is that the CSCS has not gone down that route, and it has rather sought to achieve fairness in allocation of compensation in a calibrated and measured manner.

Claimants' opening submissions

56. In his written opening submissions, Mr Mitchell, counsel for the claimants, began with an overview of their claims. This case concerns the respondents' ability to justify direct discrimination on the ground of age regarding two broad terms of the Civil Service Compensation Scheme (CSCS). The respondents admit that in respect of those terms those that leave by way of (i) compulsory redundancy (CR), (ii) voluntary redundancy (VR) or (iii) voluntary exit (VE), the provisions in the CSCS: (a) Place a cap of 6 months' pay for those who are at or aged 60 and over on their last day of service; and (b) Apply a taper to those aged over 58 years and 9 months (being 15 months away from the CSCS pension age).

57. The claimants' position is that the scheme being considered is one imposed in 2010, without consultation, that remains moored to a retirement age that is inconsistent with: (a) The removal of the Default Retirement Age; (b) The ability for workers to elect to work longer, contribute more and who can elect to continue working (and receive income) beyond 60; (c) The normal retirement age; and (d) The duty upon the respondents to adhere to their Equality Duty, thereby preventing and or ameliorating disadvantage caused by age discrimination.

58. The fact that the provenance of the taper and age cap schemes go back to before the introduction of a prohibition in age discrimination, in circumstances where attempts to amend the schemes have failed, places the respondents in an invidious position where they are seeking to establish aims to provide them with the ability to continue to apply schemes which perpetuate the substantial financial impact of direct age discrimination.

59. Under the 2010 Civil Service Compensation Scheme (CSCS) terms, the method of calculation for compensation lump sum payments to members who leave service is set out in the agreed facts. The impact upon the claimants is set out in the appendix to the agreed facts.

60. The six test claimants have been selected due to the cap/taper provisions applied to them. There are two schedules of claimants: schedule A – those who were voluntary redundant; and schedule B – those who were compulsory redundant. The six being considered (as agreed) are: (a) Schedule A – Voluntary redundant, with tapered payments: (i) Anne Perry and (ii) Paul Conlon; (b) Schedule A – Voluntary redundant, with capped payments: (i) James Sweeney and (ii) Peter Hopkins; (c)

Schedule B – Compulsory, with tapered payments: None; and (d) Schedule B – Compulsory, with capped payments: (i) Kathryn Kennedy and (ii) Adina Clarkson.

61. There are no references to actual comparators in the previous directions. As these are direct age discrimination claims, the comparators relied upon by the claimants (for the avoidance of doubt) are hypothetical comparators.

62. Mr Mitchell then provided a chronology for each of the sample claimants. Those chronologies are not reproduced here.

63. Counsel then set out the legal basis of the claims. Mr Mitchell referred to sections 13(1) and (2), and 39(2)(i)-(iii) of the Equality Act 2010; the 25th Recital to Council Directive 2000/78/EC; and Article 6 of Council Directive 2000/78. Reference is also made to the EHRC Code of Practice on Employment paragraphs 3.36-3.39, 3.41, 4.28-4.32.

64. At a very helpful table at paragraph 18 of his opening submissions, counsel sets out the broad chronology of the provenance of the CSCS in relation to the Employment Equality (Age) Regulations 2006 (what is now the relevant provisions of the Equality Act 2010).

65. Mr Mitchell then surveyed the relevant case law in an area of law that has been fairly-well traversed. In summary, this case concerns issues which at present have resulted in different outcomes in two first instance ET judgments (*Elliott v Parliamentary and Health Service Ombudsman* Case No 2200464/2018, 19 November 2019) and (*Coombes v The Driver and Vehicle Standards Agency and others* Case No 1401762/2019, 25 November 2020). In short, the claimants' case turns on whether the respondents can justify the admitted discriminatory treatment constitutes a proportionate means of achieving a legitimate aim. The aims relied upon are set out in the amended Grounds of Response [88-94].

66. Counsel submitted that age discrimination and its justification was addressed by Baroness Hale in the seminal case of *Seldon v Clarkson, Wright & Jakes* [2012] ICR 716. Therein it is noted that: "Age is different … age is not 'binary' in nature (man or woman, black or white, gay or straight) but a continuum which changes over time". The focus of the Tribunal is not upon the individual circumstances of each claimant. However, this will inform the extent of the discriminatory effect, but on whether the exclusionary rules applied are justified generally against it, with the Tribunal determining where that balance falls. Importantly Baroness Hale sets out that when an employer seeks to "justify direct age discrimination, the aims of the measure must be social policy objectives … These are of a public interest nature, which is 'distinguishable from purely individual reasons particular to the employer's situation, such as cost reduction or improving competitiveness'".

67. Mr Mitchell drew attention to *MacCulloch v ICI* [2008] ICR 1334 and a four-point guidance said to be of assistance to this Tribunal. (1) The burden of proof is on the respondents to establish justification. (2) The Tribunal must be satisfied that the measures must correspond to a real need, are appropriate with a view to achieving the objectives pursued and are reasonably necessary to that end. (3) The principle of proportionality requires an objective balance to be struck between the

discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it. (4) It is for the Tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test.

68. The claimants assert the need for careful scrutiny of the evidence put forward by the respondents in support of their justification arguments. This includes a critical evaluation of the schemes relied upon. See Pill LJ in *Hardy & Hansons plc v Lax* [2005] ICR 1565, CA and be aware of the risk of superficiality. The question as to what detail and weight of evidence is required will depend on what proposition the respondents are seeking to establish. See Bean LJ in *Air Products PLC v Cockram* [2018] EWCA Civ 346.

69. Pursuant to *Gray v University of Portsmouth* UKEAT/0242/2020 (24th June 2021) the Tribunal is respectfully reminded of what is required of it as follows. (a) Make findings about the impact (the discriminatory effect). The Tribunal will be greatly assisted by the table setting out the extent of the financial impact upon each sample claimant following the application of both the cap and the taper (albeit that the claimants' calculations are not currently agreed). (b) Make clear findings as to which, where differing potential explanations are provided, was a proportionate measure (Please note the blanket reliance on the aims and proportionality. This includes an analysis of each aim as against each scheme). (c) How the respondents' needs in undertaking that scheme weigh against the discriminatory effect (the balancing exercise).

70. In Mr Mitchell's submission, however, there remain some important themes which are likely to engage the minds of the Tribunal. They are: (a) Provenance; (b) Correlation; (c) Consultation; (d) Statistical evidence; and (e) Public Sector Equality Duty.

71. As to provenance, it is accepted that an employer can seek to *ex post facto* rationalise the aims of the scheme being scrutinised (see *Seldon*). However, where an aim is put forward a Tribunal is entitled to consider the following. (a) To what extent is there evidence that this is a legitimate aim which has been determined by the employer, having properly assessed the impact of it upon different classes of worker? (b) If an aim is asserted after the event, is it genuinely an aim of the employer? (c) If it is asserted after the event, has it actually been pursued by the employer? The claimants' position is clearly that the current scheme is moored to "out-of-date" matters which perpetuate age discrimination, and that they cannot be justified. This has also been referred to as a "hang-over" (*Coombs*).

72. So far as correlation is concerned, the proportionality must correlate with aims actually pursued by the employer. This means that a Tribunal cannot substitute different aims, but it also means that care is necessary when attributing the proportionality of separate and distinguishable aims. See *HM Land Registry v Benson* [2012] IRLR 373 EAT at [30], which cites *Chief Constable of the West Midlands v Blackburn* [2008] ICR 505; [2009] IRLR 135, and *Barry v Midland Bank plc* [1999] IRLR 581 at [§30] (at page 513A).

73. In respect of consultation, the Tribunal should note that if provisions are produced as a consequence of negotiation or agreement with unions (in this case the PCS) at any point in time previously, while this issue is not determinative, it is appropriate for the Tribunal to attach "some significance" to this in any assessment of the aim's proportionality: see *Palacios de la Villa v Cortefiel Servicios SA* [2007] IRLR 989 at [§53]; *Loxley v BAE Systems Ltd* [2008] IRLR 853 at [§42]. Given the judicial recognition as to the significance of consultation, it must be similarly relevant (but equally not determinative) where the provisions have not been subjected to negotiation or agreement with the trade union. The specific need for consultation in this case is addressed by the claimants' trade union witnesses. It should be noted that the claimants' position is as stated in evidence: "the 2010 scheme was imposed without the agreement of the PCS".

74. Turning to statistical evidence, Mr Mitchell submitted that it is no answer that just because someone is in receipt of pension or an alternative source of income that this *per se* justifies their exclusion. Elias J (as he then was) was careful not to suggest that it was in *Loxley* at [§39]. The exclusion of people entitled to receive pension is not justified as "inevitable". In *Heron v Sefton Metropolitan Borough Council* UKEAT/0566/12/SM, Mitting J stated: "In current circumstances when, as is notorious, men and women over 60 remain in large and increasing number members of the active labour force and may well require income from earnings to maintain their standard of living, the idea that the simple fact that a woman over 60 might be able to draw her state and civil service pension, so justifying a difference in treatment between her and a younger colleague will not do. Statistical evidence, no doubt collated by and available to central Government, would be required to begin to justify the difference in treatment, especially now that the age of compulsory retirement in the civil service has been raised from 60 to 65."

75. Counsel commented that the Tribunal decision in *Elliott v PHSO* Case No: 22000464/2018 [§96] made findings regarding the "complex financial situation" affecting the over 60's including: (a) the incidence of housing costs (mortgage or rent); (b) the incidence of caring roles; (c) many have children living at home; (d) the inability to obtain new employment as quickly as younger peers; and (e) the statistically significant number of civil servants who continue to work beyond the date that they can draw their pension.

76. Mr O'Connor (a trade union witness in the present case) will make the key points for consideration, against the stated aims, when assessing their proportionality against the discriminatory effect: (a) Workers are expected to work longer; (b) The age at which at which workers are entitled to take their occupational and state pension has been raised; (c) The accrual rate from which those workers benefit has been reduced; (d) The Government has introduced age discrimination legislation (expressly included the civil service); (e) The value of the tapering arrangements is insignificant in respect of the overall cost of the scheme to the employer. Mr Lewtas (also a trade union witness) will make similar points relying on *Elliott*.

77. Applying *Heron* – is the Tribunal satisfied that it has been provided with proper statistical evidence: (a) of those dismissed on efficiency grounds, as well as their ages, and (b) data as to the ages of Civil Servants and when they choose to retire?

78. Mr Mitchell then turned to arguments based on the equality duty. The purported aims cannot be pursued in a vacuum. Such aims are not only subject to challenge by individuals, but the respondents are subject to a continuing obligation to exercise their functions to seek to eliminate discrimination. Given on the facts of this case the respondents have admitted direct discrimination, subject to the justification defence, the inequality giving rise to the admission separately engages obligations upon them to act pursuant to the equality duty.

79. Counsel then set out the terms of section 149 of the Equality Act 2010 on the equality duty. Mr Mitchell emphasised the following points given the respondents' ongoing obligation pursuant to this duty.

80. It is relevant for the Tribunal to consider what steps the respondents have taken to discharge their duty, which the claimants say is a highly material consideration to be placed within the balancing exercise undertaken. In *Hockenjos v Secretary of State for Social Security* [2004] EWCA Civ 1749, the Secretary of State was required to show: (i) that the discriminatory rule reflected a legitimate aim of the UK's social policy; (ii) that aim was unrelated to any discrimination on the ground of sex; (iii) that the means chosen were suitable for attaining that aim. This includes the need to include in that balance the EU's fundamental principles (encapsulated within the equality duty).

81. The claimants say that as a consequence of section 149 the respondents are not in fact moored to the inherent inequalities that exist within the current scheme but must in "exercising its function" under the scheme, seek to "remove or minimise disadvantages" which these test cases establish. A consequence of this is, the claimants assert, that whatever the aims purportedly in place, terms of the scheme that create inequality can be discarded disregarded to ensure inequality is removed or reduced. If they can be discarded/disregarded with the application of the duty so as to remove or minimise a disadvantage. Then when considering the proportionality of the respondents' aims, they cannot assert a need to slavishly adhere to policies which perpetuate inequality. Further, given the legislative language applied to the obligation placed upon the respondents by section 149 is one of "must", where a Tribunal is presented with the application of a scheme which itself creates inequality, and where on the facts presented by the respondents its application of those aims results in schemes that are inconsistent with their obligation to comply with their duty, this enables a Tribunal to determine that any aim that is incompatible with a statutory obligation placed upon the respondents cannot be one which is proportionate. Any assessment of proportionality must take into account the statutory obligations placed upon the respondents under section 149 of the Act.

82. Mr Mitchell suggests that *Coombes* [§§36(iv) – 42] addresses this issue in part. The claimants' case is refined, as set out above. They assert: (a) The conclusions at §42 are not binding on this Tribunal; (b) The conclusions at §42 cannot be correct in law. It is their position that a statement that a failure to comply with a

PSED "adds little" to the determination of proportionality is an error of both law and in fact, particularly with regard to the balancing exercise that is required to be undertaken.

83. The claimants' stance is said to be consistent with *R (Elias) v Secretary of State for Defence*, cited in *Coombes* (§37). It is also consistent with *Seldon* (§60) for courts to "seek out the reason for maintaining the measure in question". It is the maintenance of aims which offend the respondents' equality duty which must carry substantial weight in any balancing exercise.

84. Mr Mitchell then turned to the respondents' aims. The respondents do not plead any distinction between each aim as against each system being judged. They all purportedly apply to each system indiscriminately, resulting in the fact: (a) the respondents do not differentiate between the application of each aim against the Cap or the Taper; (b) they do not differentiate between the application of each aim against each of the forms of termination – CR, VR or VE.

85. The claimants' position in summary is that these aims (if they are genuinely being pursued) are broad propositions which have no bearing whatsoever on the creation, maintenance and continued use of schemes which admittedly cause direct discrimination, particularly given they are moored to an age of retirement that is substantially out of date because its provenance is a compulsory retirement age long since out of date.

86. Counsel then referred to the aims relied upon by the respondents (said to be 6 aims, but actually 7 aims).

87. Finally, Mr Mitchell address proportionality. The claimants understand the 6 issues of proportionality relied upon to be as follows. Compensation paid to employees leaving on CR/VR/VE is a generous discretionary benefit. (ii) Bridge the financial gap between the termination of their employment and their obtaining any subsequent employment income or receiving their full pension (including any entitlement to a lump sum pension payment) at normal pension age. (iii) The provisions allocate necessarily limited funds in a fair and equitable manner amongst eligible employees, taking into account that the CSCS is (a) publicly funded and (b) non-contributory. (iv) Recognises that employees who are already at (or beyond) or close to NPA as at the date of termination typically have more limited opportunity to continue to receive earnings than a person below NPA. (v) Equity/windfall arguments – if someone received full compensation and pension/lump sum, they would be in a better position (in one sense). (vi) Cost considerations/affordability.

88. The claimants assert the greater the discriminatory impact, the greater the weight required to justify an aim perpetuating that direct discrimination. They do not accept that the respondents have shifted the great burden placed upon them when considering the substantial and continuing financial disadvantage caused to the claimants.

Assessment of the witness evidence

89. The respondent's single witness was Mr Peter Spain. He is Head of the Pensions Policy and Technical Team in the Civil Service & Royal Mail Pensions Directorate in the Cabinet Office. He has worked for either HM Treasury or Cabinet Office dealing with the Civil Service pension and compensation arrangements since 1994, apart from two short breaks. The Tribunal accepts his expertise in this area, which comes from more than 25 years' experience of the details of the operation of the Civil Service pension and compensation schemes, as well as their history prior to 1994.

90. Mr Geoff Lewtas gave evidence on behalf of the claimants. He is employed by the Public and Commercial Services Union (PCS) as a Senior National Officer and a member of the PCS Senior Management Team. Since 2011, he has been one of the PCS Senior Officials dealing with the Civil Service Compensation Scheme (CSCS). PCS is a recognised trade union which has over 185,000 members – a large majority of whom are civil servants, meaning that it is the largest Civil Service union.

91. Mr Paul O'Connor also gave evidence on behalf of the claimants. He is the Head of Bargaining for the Public & Commercial Services (PCS) trade union. He is a Senior National Officer and a member of PCS Senior Management team. He has held this role since January 2013. He is responsible for the oversight of PCS' activities in every bargaining unit, including all major Government Departments, including the DWP, HMRC and the Home Office. He is also responsible for negotiating with the Cabinet Office on matters affecting all workers in the civil service and its related areas, including negotiations in respect of the Civil Service Compensation Scheme (CSCS).

92. Mr Tolley invited the Tribunal to accept the evidence of Mr Spain. The Tribunal agrees that his explanations and responses to the questions were consistently careful, insightful, measured and cogent. In so far as any concession or acknowledgment of a point made in cross-examination was appropriate, he provided it without demur.

93. Annex 1 to Mr Spain's witness statement, also addressed in detail at paragraphs 51-119, contained important evidence that sought to demonstrate that the aim and effect of the Taper is to maintain the ratio of compensation to potential loss within a much narrower range than would otherwise be the case and to uphold the compensatory purpose of the Scheme. His evidence was that if the Taper did not exist, employees whose employment was terminated close to, at or above normal pension age would receive a disproportionately greater share of compensation. The same point would obviously arise, albeit to an even greater extent, if there were no Minimum Payment provision.

94. The Tribunal accepts that the preparation of this evidence had been signalled over a lengthy period in the course of the proceedings and could not in any sense have been said to emerge 'out of the blue' on exchange of statements. Nor was any complaint made about this (or any other) part of Mr Spain's evidence prior to his cross-examination. The preparation of such evidence was raised at the Preliminary

Hearing on 10 December 2020. On 8 December 2020 the judgment in *Coombes* had been sent to the parties. It contains references to similar evidence prepared for the purpose of the issue in that case which the Tribunal had found helpful. The point was understandably raised just two days later in the preliminary hearing in the present case on 10 December 2020 and the respondents indicated that similar evidence would be relevant here. The question whether the claimants would actually want disclosure of the underlying statistical data was also raised, albeit without any need for a resolution at that stage.

95. A summary of the underlying statistical data was disclosed by the respondents on 15 October 2021. Particular attention was drawn by GLD's e-mail of 15 October 2021 to Item 4 on the respondents' disclosure list, namely "Data on Civil Service exits by age from Civil Service Statistics", and a detailed explanation was given as to the nature of its contents and the sources of that material. There was no substantive response to that e-mail and Thompsons asked no questions about it.

96. Witness statements were exchanged on 29 November 2021, after Thompsons had sought repeated extensions of time and GLD had agreed on the basis that Thompsons were confident that there would be sufficient time to prepare for this hearing. The respondents' evidence comprised Mr Spain's statement (including Annex 1). No point was then taken or complaint made about its contents. Opening submissions were exchanged on 2 December 2021. The skeleton argument for the claimants did not contain any complaint about the content of Mr Spain's evidence. The respondents' opening submissions invited the Tribunal to pre-read in particular Mr Spain's statement and its annex. There was no suggestion on behalf of the claimants on the first day of the hearing, 6 December 2021, that the Tribunal should not read that material because there was some objection to be made to it. Nor was there any application to adjourn in order to adduce additional evidence.

97. The cross-examination of Mr Spain took place on 13 December 2021 and could, if the claimants had so required, have continued into 14 December 2021. This was more than two weeks after exchange of statements. The claimants had specifically argued, at the outset of the hearing, that their evidence should be adduced first, thereby (in the result, if not the intention) providing more time for preparation of the cross-examination of Mr Spain.

98. Contrary to the suggestion made on the claimants' behalf during Mr Spain's cross-examination, none of this material can properly be regarded as 'expert' evidence. There is no expression of opinion based on expertise. It is rather an analysis based on facts and materials equally available to both parties. It was open to PCS itself to prepare such an analysis and the judgment in *Coombes*, which referred specifically to similar evidence adduced by DVSA in the context of the taper provisions in efficiency cases, was publicly available from December 2020. The fact that PCS chose not to produce any such evidence themselves or to prepare any challenge to Mr Spain's evidence gives rise to no unfairness. In any event, when the matter was raised during Mr Spain's evidence, the claimants' counsel expressly disavowed any application to exclude the material in question.

99. The Tribunal has admitted this evidence for the reasons advanced above (those being the reasons contended for by Mr Tolley QC in his closing submissions. The

Tribunal does accept or agree with the written closing submissions made by Mr Mitchell (paragraphs 35-39), the claimants' counsel, regarding Mr Spain's evidence.

100. The Tribunal had no difficulty in accepting the evidence of the individual sample claimants, at least to the extent that they were providing evidence rather than argument via their witness statements. Mr Tolley QC accepted that they were plainly doing their best to answer questions asked of them and to assist the Tribunal. Mr Mitchell's assessment of these witnesses in his closely submissions is also helpful.

101. Anne Perry was unable to attend to give evidence for medical reasons. The Tribunal determined that she should no longer be treated as a sample claimant, although she remains a claimant in the proceedings. The other relevant case in the same category as her (voluntary redundancy within 15 months of normal pension age) is that of Mr Conlon. The Tribunal can otherwise see no obvious reason to assume that her evidence, to the extent relevant to the issues, would have withstood examination. The Tribunal agrees with Mr Mitchell that her evidence has some weight and that it is consistent with the accounts given by the other sample claimants.

102. The evidence of the PCS trade union witnesses, Mr Lewtas and Mr O'Connor, was less easy to assess. As Mr Tolley put it in his closing submissions, and the Tribunal agrees, both appeared to be inhibited (to a substantially greater degree in relation to Mr O'Connor) from giving the Tribunal their unrestricted assistance. There was a reluctance to answer certain questions, either fully or at all, on the basis that PCS wished to maintain (as against certain other Civil Service unions) the confidentiality of its contributions to consultations with Cabinet Office about the CSCS. As a result, they did not wish to give evidence about such material in a public forum (although this concern did not appear to restrain the provision of such evidence as was thought to assist PCS's position). In addition, at times, the evidence of Mr Lewtas and Mr O'Connor involved the making of submissions rather than giving evidence and, during Mr O'Connor's evidence, to a confusion between the giving of evidence and the process of negotiation.

103. Mr O'Connor referred in his witness statement on numerous occasions to documents which had not been produced in these proceedings. Mr Lewtas also gave evidence about matters which must have been derived from documents (albeit not identified). The Tribunal had previously made a standard direction that where reference was made in a witness statement to a document, the page number from the hearing bundle must be included. Despite the matter being raised in correspondence, in opening submissions and at the outset of this hearing, and the relevant points being specifically brought to the witnesses' attention during cross-examination, the documents in question were not provided to the Tribunal. Mr Tolley's concern, which the Tribunal simply notes with some sympathy, was that the documents would be referred to by the witnesses during cross-examination, but in a manner which (in view of the video hearing) made it difficult to challenge. However, as matters turned out, the reference was made to the material but without producing the documents. The non-provision of these materials obstructed any challenge to the paragraphs in question in the witness statements. In the

Tribunal's assessment, this affords the relevant parts of that evidence reduced weight, but without discounting or excluding the evidence.

Agreed facts

104. The Tribunal was presented with and took account of a document intended to set out primary and uncontroversial facts that the parties consider are important and on which they agree

105. The Principal Civil Service Pension Scheme ("the PCSPS") and the Civil Servants (and Others) Pension Scheme ("CSOPS") are the occupational pension schemes for the Civil Service. The Civil Service Compensation Scheme ("the CSCS" or "the Scheme") sets out the basis on which a government department may award compensation in the event of early termination of a civil servant's contract of employment, including on grounds of redundancy or efficiency. The PCSPS, CSOPS and the CSCS are statutory schemes. The PCSPS and the CSCS were made under the Superannuation Act 1972 ("the Act"), and CSOPS was established by regulations made under the Public Service Pensions Act 2013.

106. When originally established in June 1972, the PCSPS was a single scheme dealing with both pensions and compensation for early termination of employment. With effect from 9 January 1995, the elements of the PCSPS which related (amongst other things) to redundancy, early retirement and efficiency were separated from the pension provision, to constitute the CSCS. This change was not intended to change the benefits available to civil servants and the CSCS and the PCSPS remained closely linked and integrated.

107. Section 2(2) of the Act provides for the Scheme to make provision for the payment of allowances or gratuities "by way of compensation" to or in respect of persons who suffer loss of office or employment (or loss or diminution of emoluments) in such circumstances, or by reason of the happening of such an event, as may be prescribed by the Scheme. The Civil Service Management Code (the "CSMC"), issued under the authority of Part 1 of the Constitutional Reform and Governance Act 2010, provides a framework for Civil Service terms and conditions.

108. There are a number of different pension schemes pursuant to the PCSPS, depending on the date of commencement of a civil servant's employment and other factors. A summary of the schemes in question is as follows.

109. For employees joining the Civil Service prior to 1 October 2002, a defined benefit scheme based on final salary, with a normal pension age (formerly a normal retirement age) of 60, known as 'Classic'. A defined contribution (money purchase) stakeholder pension was introduced as an alternative option for new entrants joining on or after 1 October 2002, known as 'Partnership'. A defined benefit scheme based on final salary was put in place on 1 October 2002 (it is now closed to new entrants), with a normal pension age of 60, known as 'Premium'. On 30 July 2007, a defined benefit scheme based on career average earnings, with a normal pension age of 65, known as 'Nuvos', was offered to civil servants. Nuvos was closed to new members from 1 April 2015. For new joiners on after 1 April 2015, a new defined benefit scheme based on career average earnings, with a normal

pension age of 65 or later, called 'Alpha'. The current version of the CSCS is that which came into force in 2010.

110. The effect of the provisions of the CSCS in relation to compensation for early termination of employment on grounds of redundancy (compulsory or voluntary) or voluntary exit is in summary as follows.

111. In a Compulsory Redundancy (CR) situation, the maximum tariff available to an eligible member will be 1 month's pay per year of service up to a maximum of 12 months' pay. Where the employee is, at the date of termination of employment, within 6 months of normal pension age, there is a 'taper' provision, whereby the maximum amount (if otherwise payable) is reduced by one month's pay per month of service in the relevant period (rounded to the nearest whole month). There is a minimum compensation payment of 6 months' pay or the equivalent of statutory redundancy pay (whichever is the greater) which is payable to employees who have at least 6 years' service and whose employment is terminated after reaching normal pension age (or within the latter half of the month before reaching that age).

112. In a Voluntary Redundancy (VR) situation, the maximum tariff available to an eligible member will be 1 month's pay per year of service up to a maximum of 21 months' pay. Where the employee is, at the date of termination of employment, within 15 months of normal pension age, there is a 'taper' provision, whereby the maximum amount (if otherwise payable) is reduced by one month's pay per month of service in the relevant period (rounded to the nearest whole month). There is a minimum compensation payment of 6 months' pay or the equivalent of statutory redundancy pay (whichever is the greater) which is payable to employees who have at least 6 years' service and whose employment is terminated after reaching normal pension age (or within the latter half of the month before reaching that age).

113. In a Voluntary Exit (VE) situation, the tariff available to an eligible member must not be less than the equivalent of statutory redundancy pay or more than 2 months' pay per year of service up to a maximum of 21 months' pay. There are the same 'taper' and minimum payment provisions as apply in a VR situation.

114. The above tariffs are all therefore subject, in relation to employees who have at least 6 years' service, to a minimum payment of 6 months' pay or the equivalent of statutory redundancy pay (whichever is the greater) for those who are at or over normal pension age (or within the latter half of the month before reaching that age) on their last day of service.

115. For any employee whose employment may be terminated on one of the relevant grounds and who has less than 6 years' service as at the date of termination of their employment, their compensation payment is not affected by the 'taper' or minimum payment provisions. They will receive compensation calculated according to the relevant tariff and their length of service.

116. The content of the current version of the CSCS was the product of consultation with relevant trade unions. Such consultation complied with the consultation obligation in the Act.

117. The specific cases of the sample claimants are set out in the Appendix attached to the agreed facts. The Tribunal does not reproduce that Appendix here, but it is to be treated as incorporated by reference.

Findings of fact otherwise made or accepted by the Tribunal

The Cabinet Office's position or perspective

118. The Cabinet Office manages the Civil Service's arrangements for both retirement pensions and compensation benefits payable on early termination of employment. The Principal Civil Service Pension Scheme ("the PCSPS") and the Civil Servants (and Others) Pension Scheme ("CSOPS") are the occupational pension schemes for the Civil Service.

119. The Civil Service Compensation Scheme ("the CSCS" or "the Scheme") sets out the basis on which departments can award compensation when civil servants' contracts are terminated early, on grounds (amongst others) of redundancy or efficiency. These are statutory schemes – the PCSPS and the CSCS were made under the Superannuation Act 1972 ("the Act"), and CSOPS was established by regulations made under the Public Service Pensions Act 2013 – and they apply to government departments and agencies (and other specified public bodies). Within this framework, the Cabinet Office seeks to ensure that the rules of the various schemes continue to meet the developing needs of the Civil Service as an employer. It consults with the Civil Service unions on any changes to the rules of the schemes, as required by the Acts concerned and pursuant to maintaining good industrial relations.

120. The statutorily expressed basis of the CSCS is compensatory. Section 2(2) of the Act provides for the Scheme to make provision for the payment of allowances or gratuities "by way of compensation" to or in respect of persons who suffer loss of office or employment (or loss or diminution of emoluments) in such circumstances, or by reason of the happening of such an event, as may be prescribed by the Scheme. 5. The Civil Service Management Code (the "CSMC"), issued under the authority of Part 1 of the Constitutional Reform and Governance Act 2010, provides a framework for Civil Service terms and conditions. The relevant sections, for the purposes of these proceedings, are at [313-321].

121. Before the establishment of the CSCS in 1995, rules relating to early termination compensation were included within the PCSPS itself, so that the one scheme covered both pension and early termination benefits. However, even after the CSCS was established as a distinct scheme, there continued to be the same strong links between pension terms and compensation terms on termination. The benefits payable under each of the PCSPS and the CSCS take into account those payable under the other. Benefits payable under both schemes have been, and continue to be, generous as compared to the private sector.

122. The pension arrangements have undergone considerable reform over recent years. A summary of the changes in question can be seen in the agreed facts above. Although there have been some changes to the CSCS terms over the years, they have not been subject to the same extent of revisions as the PCSPS.

123. Work led by the Cabinet Office began on reform of the CSCS in 2003/4. The then applicable 1987 terms were increasingly seen as inflexible and unduly expensive and, with age discrimination legislation then on the horizon, the Cabinet Office recognised that the arrangements should take into account that age-related features would have to be objectively justified. However, senior management also recognised that reforming the CSCS could have serious implications for industrial relations when large numbers of civil servants were then departing on what staff understandably perceived to be advantageous terms, particularly against the backdrop of full reserved rights to former terms in 1987 (staff who were serving in a mobile grade on 1 April 1987, and who were between aged between 40 and 50 on leaving, retained rights to the more generous former terms).

124. Confidential discussions between the Cabinet Office and Council of Civil Service Unions ("the CCSU") started in 2008. In July 2009, the Cabinet Office launched the "Fairness for All" consultation on reform of the CSCS [283-312]. It proposed service-related lump sum compensation on redundancy of up to a maximum of 2 years' pay, payable to all regardless of age, except that the maximum payable to those nearing or over normal pension age would be less, reflecting the availability of unreduced pension from that age onwards. Five unions (Prospect, the Prison Officers' Association, the GMB, Unite and the FDA) agreed the proposals, which included the current taper and minimum payment arrangements, but the PCS announced it would ballot for industrial action.

125. The PCS applied for judicial review of the CSCS amendments on the basis that it had not agreed to them. At that time, the Act provided for an effective veto available to any of the representative trade unions. The High Court upheld the claim. See *R (on the application of the Public and Commercial Services Union) and Minister for the Civil Service* [2010] EWHC 1027. This meant that the majority of the amendments were quashed (on the basis that the changes affected accrued rights under the Act and could not therefore be made without union agreement) and the majority of CSCS terms continued in place.

126. In July 2010 the Minister for the Cabinet Office announced the Government's intention to reform the CSCS. The Act was amended to remove the requirement for the agreement of all those consulted before making detrimental changes and introduced new requirements about how consultation on such changes must be carried out and reported on. A new version of the CSCS was laid before Parliament on 21 December 2010. No changes were then made to the provisions which are in issue in the present claim and the Civil Service unions made no proposals for any amendments to those terms.

127. Until it disbanded in December 2010, the CCSU acted on national issues for the main Civil Service unions and regularly met with the Cabinet Office. The CCSU no longer exists, but the Cabinet Office continues to meet the National Trade Union Committee, a group of representatives of the main Civil Service unions, to discuss pension and compensation issues as before.

128. The claims before the Tribunal to which this hearing relates are concerned with termination on grounds of redundancy, whether voluntary or compulsory. By way of

background only, compensation for dismissal on efficiency grounds is also dealt with by the CSCS. There are other claims in the Employment Tribunal in respect of dismissals on 'efficiency' grounds which arise where, as the result of poor attendance or performance on the part of an employee due to an underlying health condition, an employing department considers that the employment should be terminated. One particular case is *Coombes v DVSA and Cabinet Office* (Claim Number 1401762/2019). The Employment Tribunal's judgment in that case was issued on 8 December 2020. There is a pending appeal from that judgment.

129. Compensation for certain dismissals (including voluntary redundancy) were previously calculated according to Flexible Early Severance ("FES") provisions, which were introduced in 1987. There were some amendments to the FES provisions but following major reforms to the CSCS in December 2010 (see below) the FES terms no longer apply in any situation other than efficiency dismissals. This means the FES provisions do not apply to the sample cases. This is why efficiency dismissal cases are dealt with separately, although essentially the same justification for the taper provisions applies across the CSCS. There are some differences between the CSCS provisions in relation to efficiency dismissals and those relating to redundancy dismissals. The significant difference is that, while in efficiency cases, the taper operates to nil compensation at normal pension age, in redundancy cases, there will always be a compensatory benefit of some amount payable under the CSCS, which is never less than the amount which would be payable to a non-Crown employee by way of statutory redundancy pay. If an employee has at least 6 years' service at the date of termination, the compensatory benefit payable under the CSCS will not be less than 6 months' pay.

130. So far as the CSCS Rules for Compulsory Redundancies, Voluntary Redundancies and Voluntary Exits are concerned, the relevant version of the Scheme is that which came into force in 2010 [279-282]. In summary, the CSCS provides for the following in respect of compensation payable when employment is terminated on grounds of compulsory or voluntary redundancy or voluntary exit:

131. In a Compulsory Redundancy (CR) situation, the maximum tariff available to an eligible member will be 1 month's pay per year of service up to a maximum of 12 months' pay. Where the employee is, at the date of termination of employment, within 6 months of normal pension age, there is a 'taper' provision, whereby the maximum amount (if otherwise payable) is reduced by one month's pay per month of service in the relevant period (rounded to the nearest whole month). There is a minimum compensation payment of 6 months' pay or the equivalent of statutory redundancy pay (whichever is the greater) which is payable to employees who have at least 6 years' service and whose employment is terminated after reaching normal pension age (or within the latter half of the month before reaching that age).

132. In a Voluntary Redundancy (VR) situation, the maximum tariff available to an eligible member will be 1 month's pay per year of service up to a maximum of 21 months' pay. Where the employee is, at the date of termination of employment, within 15 months of normal pension age, there is a 'taper' provision, whereby the maximum amount (if otherwise payable) is reduced by one month's pay per month of service in the relevant period (rounded to the nearest whole month). There is a minimum compensation payment of 6 months' pay or the equivalent of statutory

redundancy pay (whichever is the greater) which is payable to employees who have at least 6 years' service and whose employment is terminated after reaching normal pension age (or within the latter half of the month before reaching that age).

133. In a Voluntary Exit (VE) situation, the tariff available to an eligible member must not be less than the equivalent of statutory redundancy pay or more than 2 months' pay per year of service up to a maximum of 21 months' pay. There are the same 'taper' and minimum payment provisions as apply in a VR situation.

134. The above tariffs are all therefore subject, in relation to employees who have at least 6 years' service, to a minimum payment of 6 months' pay or the equivalent of statutory redundancy pay (whichever is the greater) for those who are at or over normal pension age (or within the latter half of the month before reaching that age) on their last day of service. There is a minimum pay figure and a maximum pay figure used in the tariffs. If an employee's annual pay is less than £23,000, that higher amount is used to calculate the compensation payment. If any employee's actual pay is more than £149,820, the lower, maximum, amount is used to calculate the compensation.

135. Regarding the terminology used to refer to the minimum payment provisions of the CSCS, these provisions are often referred to for short as a "cap" and this is the way it can be perceived. However, this terminology can be misleading. The Tribunal accepts that the language is that of 'minimum payment' (see further below).

136. The purpose of the payment of CSCS compensation in redundancy cases is to assist in bridging the gap between the date of termination of employment and the date on which an individual becomes entitled to full payment of pension. Taken to its logical conclusion, this would produce an outcome whereby nil compensation is payable under the CSCS once an employee has reached normal pension age. This is the position in relation to efficiency dismissals. However, in redundancy cases, there will always be some substantial compensation payable under the CSCS, even if the individual has already reached normal pension age and is entitled to receive full payment of pension. This operates as a form of concession to such employees dismissed on grounds of redundancy, notwithstanding that there is no 'gap' to bridge.

137. In such cases, therefore. the reality of the position under the CSCS is that an individual is entitled to compensation amounting to six months' pay (or, if they have less than six years' service, to a month's pay per year of service) or, if greater, the amount produced by the statutory redundancy pay calculation. In the Cabinet Office's view, it does not aid understanding to view the employee as if she or he were entitled to a month's pay for every year of service, only then to be limited to a maximum of six months' pay.

138. The analysis operates in the same way in relation to an employee dismissed on grounds of redundancy within six months of reaching normal pension age. In such case, the employee will be entitled to a compensatory payment under the CSCS of a month's pay for each month until normal pension age plus six months' pay (assuming six years' service). The point is that the individual in such a case is

compensated by an amount referable to the length of the period until normal pension age plus the further amount of six months' pay. It is again, from the Cabinet Office's perspective, unhelpful to view such an employee as though she were entitled to compensation amounting to a month's pay for every year of service, only then to be limited to a maximum of six months' pay for the months up to normal pension age plus a further six months' pay.

139. The minimum payment applies to employees who have at least six years' service. For any employee whose employment may be terminated on one of the relevant grounds and who has less than 6 years' service as at the date of termination of their employment, their compensation payment is not affected by the 'taper' or minimum payment provisions. They will receive compensation calculated according to the relevant tariff and their length of service, subject always to the minimum payable being the amount calculated in accordance with the statutory redundancy pay calculation.

140. The Cabinet Office evidence addressed the overall purpose and aims of the CSCS in relation to the Taper and Minimum Payment provisions. The overall purpose of the CSCS is to provide some compensation to employees leaving on either compulsory redundancy, voluntary redundancy or voluntary exit, and who would not otherwise be entitled to compensation for loss of employment as Crown employees have no statutory right to a redundancy payment. It also covers 'efficiency' dismissals (see above). It operates on the basis that the dismissal is fair.

141. The relevant provisions of the CSCS assume, where there has been a no fault dismissal on the ground of redundancy (whether voluntary or compulsory or 'voluntary exit'), that there is the potential for the employee to suffer financial loss, in terms of loss of earnings and pension, between dismissal and the employee either obtaining alternative employment or reaching normal pension age, at which point the employee becomes eligible to receive their pension (including the option of a lump sum) without any reduction for early receipt. Such CSCS compensation seeks, so far as appropriate and reasonable, to bridge the gap between the date the employment comes to an end and the date on which the individual may obtain alternative employment, or otherwise – at latest – receive their full pension (including an entitlement to a lump sum pension payment) at normal pension age.

142. The CSCS compensation is part of an overall package of termination benefits provided by the Civil Service to employees, including the valuable benefits paid under the PCSPS and CSOPS. Given that the available funds for such benefits are necessarily limited, the overall intention is to allocate those funds in a fair and equitable way amongst eligible employees. It is also necessary to take into account that the CSCS is publicly funded, and employees are not required to and do not make any financial contribution in respect of the CSCS. Length of service (and to that extent age) is taken into account in favour of the employee, with longer service incrementally increasing the multiplier up to the point at which an individual's age becomes close to normal pension age.

143. It is also important to seek to achieve, in broad terms, fairness between those who are close to normal pension age and those who are at or beyond normal

pension age, and between persons in both such categories and those further from normal pension age, by taking into account the extent to which an employee dismissed on grounds of redundancy has lost the opportunity to go on receiving salary. However, this does not involve any investigation of the specific likelihood of obtaining alternative employment or requiring the employee to give credit in the event of obtaining alternative employment.

144. If an employee is already at or beyond normal pension age as at the date of termination of her or his employment, she or he will necessarily have a more limited opportunity to continue to earn salary from their employment than a person below normal pension age. Similarly, those employees who are close to normal pension age as at the date of termination of their employment necessarily have a more limited opportunity to continue to receive earnings than a person further from normal pension age. The extent of that opportunity will decline as the employee approaches and moves beyond normal pension age. The importance of normal pension age is of course that at that point a departing employee is entitled to receive their full annual pension, with the potential for commutation in order to receive a substantial lump sum.

145. The taper provisions also seek to avoid a 'cliff-edge' effect at normal pension age, whereby compensation might be paid in full up to that age, and then reduced thereafter to the minimum compensation of 6 months' pay (for those with at least 6 years' service at the date of termination). Together with the minimum payment provisions, they ensure that all employees dismissed on the relevant grounds, and with at least 6 years' service, receive a substantial minimum amount of six months' pay or the equivalent amount to statutory redundancy pay (whichever is the greater).

146. In addition, in the Cabinet Office's view, it is important the rules of the Scheme should be administratively workable. In view of the huge number of Civil Service employees (the Civil Service headcount was 484,880, according to Civil Service Statistics, as at 31 March 2021), and their widely varying circumstances, it is necessary to operate the Scheme on the basis of simple and clear rules which are straightforward to administer.

147. Arguments have been put forward in other cases concerning alleged age discrimination in relation to the CSCS that, rather than making general assumptions about employees, the rules should require each department to examine each individual's personal circumstances at the date of departure in order to determine whether the assumptions built into the Scheme in fact apply in the case of that individual (for example whether the departing employee was more or less likely to obtain alternative employment) and to vary her or his compensation accordingly. While it would in theory be possible to assess this, it is not realistically possible to conduct individual investigations and then assess an individual's particular circumstances (for example, each individual's personal financial position or likelihood of acquiring other income). Getting individuals to complete questionnaires for example would be very resource intensive. Furthermore, they might refuse to co-operate, and it would be impossible to know whether the information they were giving was accurate. It is also not clear how any information provided could be used to tailor the compensation payable while still ensuring that

staff across the board were being treated fairly and consistently. It is also difficult to see how any form of means testing would be reliable, practical or desirable from a policy point of view. Any system of this nature would be likely to be hugely expensive and time-consuming to administer, and the very fact of the exercise would tend to give rise to reasonable differences of opinion and so grounds for dispute. For these reasons, the rules of the Scheme seek to allocate benefits by reference to clear lines that can be applied with certainty in each case.

148. From the Cabinet Office's perspective, the same point can be made in relation to the point at which the taper begins to apply. It would again in theory be possible to make an individualised assessment of the extent of the employee's lost opportunity to continue earning in Civil Service employment, applied at whatever age the employee was at the date of dismissal, but the same problems would inevitably arise.

149. In addition to the above key policy aims, the following other policy aims have been and are taken into account in the operation of the CSCS.

150. *Civil Service Ethos*: Delivering high quality public services requires a productive and engaged workforce with the necessary skills to meet operational needs. To attract, engage and retain high calibre staff to create the optimal workforce to deliver high performance services to its customers, the Civil Service must offer terms that are inviting to prospective employees and provide an incentive to existing staff. The Civil Service does not see itself as a "hire and fire" employer, but one that offers a reasonable package of terms during employment and generous terms after leaving service. The former category includes a wide range of non-pay benefits. The latter category includes access to occupational pension terms and, where appropriate, compensation for early termination of employment.

151. *Workforce planning*: The package of benefits contained in the CSCS is designed to be sufficiently attractive that individuals will volunteer for departure either when workforce numbers need to be reduced or when it is desirable to facilitate either promotion opportunities or the refreshing of talent. Paying unlimited compensation to those close to or over normal pension age could affect behaviour and act as a perverse incentive to employees to hang on until they are dismissed, or closer to normal pension age, rather than take retirement.

152. *Protection of public funds and budgetary constraints*: The cost to the taxpayer of the CSCS means that compensation cannot be unlimited and there must be a fair and rational allocation of benefits to those who lose their jobs prematurely. One of the drivers for changes in 2010 was that the previous terms were unduly expensive and were out of line with those available in the private sector and elsewhere in the public sector. With the Civil Service being such a large workforce, the overall costs of compensation payable under the CSCS are high. MyCSP, the Scheme Administrator, has provided data showing that in the three years from 2017/2018 to 2019/20 the average amount spent each year on Voluntary Exit, Voluntary Redundancy and Compulsory Redundancy departures was approximately £88.2 million.

The trade union's position or perspective

153. The PCS trade union's position or perspective (as opposed to the legal submissions made on behalf of the sample claimants) can be best gleaned from the witness evidence of Mr Lewtas.

154. The PCS takes the view that the severance provisions under consideration in this case for voluntary (VR) and compulsory (CR) redundancy are directly discriminatory on grounds of age (subject to the question of whether this is justified). The amounts that the claimants received were lower than would otherwise have been the case because of the application of the taper and age cap provisions, based on the fact that they were aged 58 years and 9 months, or older.

155. Different CSCS terms and provisions existed in the Civil Service before the current 2010 CSCS, but – in the PCS's view – it is important to note that the 2010 scheme was imposed without the agreement of the PCS.

156. As an indication of how much the treatment of individuals differ due to the taper and age cap, Mr Lewtas offered the example of two individuals – one aged 50 years, 6 months and the other aged 59 years, 6 months, both with the same length of service (say 30 years) and same salary and both leaving on VR terms. Not only does the younger person gain an unreduced pension (which in the Classic pension scheme includes a lump sum of 3 times their annual pension), with pension payable for 9½ years up to age 60, but this person also has a much better chance of gaining further employment and thus topping up their overall income. This compares to the older person who will receive a 12 months` salary compensation payment (6 months tapered payment plus 6 months), but who would need to use some of this to gain their pension (and lump sum) 6 months before their 60th birthday, and who will probably have less chance of finding further employment. The same would be true, in this example, for someone aged over 60 at the time of leaving, and they would only receive 6 months' payment. Significantly, if there was no age cap or taper, the older person would gain a compensation payment of 21 months` pay, as well as a choice about taking their pension.

157. In his witness evidence, Mr Lewtas set out the difference in full entitlements and the payments actually received by the sample claimants. This is not reproduced here, not least because this information appears elsewhere in the evidence before the Tribunal.

158. The trade union's position is that during the period from 2011 it has seen no evidence as to the reasons for the adoption of the scheme rules and in particular no evidence as to the reasons for the adoption of a taper provision or the age cap, either in principle or in respect of its length. It surmises that this bears a relationship to former arrangements, existing up to 15 or 20 years ago, in relation to Default Retirement Age.

159. In Mr Lewtas's assessment and recollection, on behalf of the trade union, is that prior to 2000 there was a rigid application of a 'Retire at 60' approach, and that individuals would have to seek permission to stay on further, and that there was a Final Retirement Age of 65 which could not be exceeded. During the decade 2000

there was a growing relaxation of the position, due to the increasing awareness that age discrimination was a factor, and because the equalisation of State Pension age was ahead, which meant that gradually women would no longer have this state benefit at age 60, as it was changed to age 65. Finally, in 2011 the Default Retirement Age was generally removed, and with increases in the qualifying age for the State Pension, and for all or most occupational pension schemes, the notion of a required Retirement Age has disappeared.

160. In the trade union's account, this obviously calls into question why such "outdated" rules such as the taper and age cap should be surviving in a situation of considerable freedom of choice about individual retirement dates. It is suggested that there was never any specific consideration of a read-across between the changed position on Retirement Age and the continuation of the taper and age cap feature. It is also contended that there has never been discussion about why the taper was originally adopted or any specific reconsideration of its continuing validity. For that reason, the trade union concludes that the whole basis of thinking, the aims and justifications in the respondent`s Amended Grounds of Response are on unsound grounds. Mr Lewtas argues this on the basis that the age cap and taper are historical anachronisms from the last century and bear no relationship to the shift in Age of Retirement realities which has occurred in the last decade or more. Mr Lewtas's belief is that there was never any proper discussion about their application, and that no reasons or purported legitimate aims were advanced for continuing with such features in 2010 during the last negotiations.

161. At this point in his witness statement, Mr Lewtas's evidence becomes argumentative, which is not really the purpose of witness evidence, as opposed to submissions.

162. Nevertheless, doing the best that it can with this evidence, it appears to the Tribunal that the trade union's position is that, if the aim of the scheme was to bridge the gap in income between dismissal and normal pension age, then account must be taken of the changed realities concerning normal pension age, as normal pension age is now 66 or 67 for many employees. The Tribunal understands this to a reference to the state pension age. Contrary to this new reality, it seems clear to the trade union that actually the aim of the scheme was more likely to be intent on dovetailing with the normal/default retirement age within the Civil Service.

163. The trade union's perspective, as conveyed by Mr Lewtas's evidence, is that the history behind the relevant provisions demonstrates that the taper is a hangover from a scheme that was implemented prior to the introduction of the age discrimination legislation, and that the respondents have not reviewed the impact of the taper or age cap as part of its ongoing obligation to keep such matters under review in accordance with the public sector equality duty.

164. Mr Lewtas suggests that the median retirement age in the Civil Service is 62; 30% of retirees are over aged 63 and 17% over 65. Instead of this reality, he contends, the respondents assume that people choose to retire at or around age 60 and assume that there is less financial need for a Standard VR payment for staff near age 60 and over. These are said to be "obviously wrong" assumptions. The "simple point" is that this reality has not been considered by the respondents, nor

have they reviewed or considered whether there exist any non-discriminatory ways to modify the scheme. There are various matters that the respondents could have considered and subjected to empirical assessment, Mr Lewtas opines, particularly the removal of the taper and age cap.

165. The Tribunal does not wish to discount Mr O'Connor's evidence, not least because it contains a useful account of the recent history of the Civil Service Compensation Scheme, the Government's various proposals to reform or amend it, and the part played by the trade unions (and the PCS, in particular) in consultation, negotiation and litigation around the Scheme to date. The Tribunal notes, in particular, the points that Mr O'Connor makes at paragraphs 34-36 of his witness statement concerning the Government's 2016 proposals. It also notes the data introduced in evidence at paragraphs 37-40, but the Tribunal does not consider that it is assisted greatly by this rather under-developed data.

166. Perhaps of greater assistance is Mr O'Connor's evidence on the PCS's position on negotiations regarding the CSCS. As Mr O'Connor records, in September 2017 the Government launched a fresh consultation. The stated aims of the government's proposals for reform were relatively unchanged from those outlined in the 2016 consultation document. The 2017 consultation led to a long series of negotiations with the unions. The process has not yet concluded. At the outset of the negotiations, the PCS National Executive Committee (NEC) agreed a number of key negotiating aims. Amongst those was an objective to eradicate the age discriminatory aspects of the current scheme. Unions were invited to submit counter proposals to those set out in the consultation document. PCS has done this. Those negotiations have been conducted in confidence and are still ongoing, so Mr O'Connor is only able to comment on PCS's position in respect of the tapering arrangements so as not to create any overall prejudice to those talks.

167. With regard to the tapering arrangements, PCS's position in the negotiations is that these need to be eradicated as they are discriminatory on the grounds of age. In its our final counterproposal on the composition of the scheme, it has proposed the removal of the tapering arrangements. The trade union takes the view that pension provisions within the Civil Service and the provisions of the CSCS have changed significantly since the tapering arrangements were first introduced. That changed landscape, together with a closer analysis of the overall cost elements of particular aspects of the CSCS that has emerged during negotiations, has led PCS to the conclusion that the tapering provisions are discriminatory and unjustified.

168. In particular, the following considerations are key for the PCS trade union:
- workers are now expected to work longer
- the age at which workers are entitled to take their occupational and state pensions has been raised
- the accrual rate from which those workers benefit has been reduced
- the government has introduced age discrimination legislation
- the value of the tapering arrangements are insignificant in respect of the overall cost of the scheme to the employer.

This leads the PCS to the conclusion that there is no longer, if there ever was, any justification for the existence of the tapering arrangements. Their existence is discriminatory and cannot be justified as legitimate or proportionate.

The sample cases

169. The claims brought in respect of redundancy compensation have been divided into 'Schedule A' cases, which relate to voluntary redundancy terminations, and Schedule B cases, which concern compulsory redundancy terminations. The sample cases were selected based on the categories identified in the List of Issues [126] and on the basis that there were no special features to these cases (such as part-time work or partial receipt of pension). They are intended therefore to be illustrative of general principles.

170. The List of Issues identifies four categories of cases, as follows. (a) A person whose employment was terminated on the basis of compulsory redundancy and who was at or over normal pension age on the last day of service. The sample cases for this category are Kathryn Kennedy and Adina Clarkson. (b) A person whose employment was terminated on the basis of compulsory redundancy and who was within six months of normal pension age on the last day of service. There are no claims which have been brought within the relevant time limits have been identified for this category. (c) A person whose employment was terminated on the basis of voluntary redundancy or voluntary exit and who was at or over normal pension age on the last day of service. The sample cases for this category are James Sweeney and Peter Hopkins. (d) A person whose employment was terminated on the basis of voluntary redundancy or voluntary exit and who was within fifteen months of normal pension age on the last day of service. The sample cases for this category are Anne Perry and Paul Conlon.

171. The Cabinet Office witness, Mr Spain, has provided a spreadsheet which sets out information on each of the sample cases. He obtained data from MyCSP, the pension scheme administrator for the PCSPS and CSOPS, the product of which is in the spreadsheet.

Anne Perry

172. Note that Anne Perry did not give evidence and is no longer being treated as a sample claimant, although she remains a claimant. See above.

173. Anne Perry was employed by HMRC from 14 January 1979 until 31 January 2020. Her last role with HMRC was as a Collector/Customer Adviser, on a salary of £21,020.00. She had continuous service of 41 years on termination of her employment. At the time of the termination of her employment she was aged 59 years and 5 months, nearly 6 months.

174. On termination of her employment, she received a redundancy payment of £23,000, which was a tapered payment, to reflect that she only had 6 months to go before her 60th birthday, and so she received 12 months' pay. This is lower than the amount she would have received if she had the same length of service and she was below the age of 58 and 9 months, when she would have received the full 21 months' redundancy pay.

175. There was limited correspondence and details from HMRC regarding my redundancy, and she was not told very much over the years. With the help from her trade union, she lodged a grievance regarding the discriminatory effect of the Civil Service Scheme, after she was notified of what her redundancy compensation would be. The trade union took this up on her behalf.

176. She took the maximum lump sum from her pension, of £30,678.30, and her annual pension is £10,091.41.

177. She has not applied for any new jobs, as she does not think that she would be successful due to being over 60. She needed to find at least 5 years' salary to bridge the gap to her statutory (that is, state) pension age of 65 (the Tribunal wonders whether that is actually 66 or 67, but as Anne Perry did not give evidence, it is unable to resolve that matter). Her anticipated earnings for these 5 years would have been at least £105,100, subject to any pay rise, and she would have contributed more to her pension, allowing her to take a larger lump sum and secure a higher annual pension. Her redundancy payment of £23,000 is much less than the earnings she requires to pay for normal living expenses. (The Tribunal notes that this takes no account of the lump sum that she received nor the ongoing annual pension).

178. Anne Perry's position is that, if she had been 9 months younger when she was made redundant, her final redundancy figure would have been over £36,700. She also understands that her younger colleagues of aged 50 or above, with similar capabilities and experience to her, have found new employment more easily than her due to their age, and the fact that they could provide a longer service to new employers before retirement age. Her younger colleagues would then have benefitted from a significant redundancy payment of 21 months' pay, as well as being able to 'bank' their pension to take it as unreduced when they reached 60. They would also benefit from salary and a further pension from their new employment.

Paul Conlon

179. Paul Conlon was employed by HMRC from 1 September 1986 until 30 September 2020. His last role with HMRC was as a Higher Executive Officer, on a pensionable salary of £34,539.00, and overall salary of £34,997.00. He had continuous service of 34 years on termination of his employment. At the time of the termination of his employment he was aged 59 years and 1 month.

180. On termination of his employment, he received a redundancy payment of £49,579.14, which was a tapered payment, to reflect that he only had 11 months to go before his 60th birthday, and so he received 17 months' pay. This is lower than the amount he would have received if he had the same length of service and he was below the age of 58 and 9 months, when he would have received the full 21 months' redundancy pay.

181. He did not raise a grievance because he considered that management were merely applying a policy that was clear to them and to him at the time, and the

outcome of any grievance would not have changed his situation at that time. To him the matter could be dealt with only once he had left.

182. He took the maximum lump sum from his pension, of £76,769.06, and his annual pension is £11, 365.36.

183. He has not looked for or found new employment. His mental health was affected by the redundancy situation, which he was frustrated by, and he knew that he would not be able to find new employment at the same level at his age. He needs to find almost 8 years' salary to bridge the gap to his statutory (state) pension age of 67. His anticipated earnings for these 5 years would have been at least £279,976.00, subject to any pay rise, and he would have contributed more to his pension, allowing him to take a larger lump sum and secure a higher annual pension. His redundancy payment of £49,579.14 is much less than the earnings he requires to pay for normal living expenses and financial stability. (The Tribunal notes that this takes no account of the lump sum that he received nor the ongoing annual pension).

184. He would have worked beyond age 60. His wife is a career civil servant and works in the building that is next door to the tax office that he worked in prior to these recent HMRC workforce changes. She will be 60 at the end of 2022 and they had a long-standing plan to retire together at that time. Any options that management can say now that were available to him that cover the period to the end of 2022 have to viewed without the hindsight of how the COVID pandemic has affected things for the period. There was no guaranteed offer of working from home for this period and a job working at a different location was not feasible for him financially, as that would necessitate the purchase of a second car, etc. Other personal commitments ruled out a long commute.

185. If he had been 4 months younger when he was made redundant, his final redundancy figure would have been over £61,200.00. He also believes that his younger colleagues of age 50 or above, with similar capabilities and experience to him, could have found new employment more easily than him due to their age, and the fact that they could provide a longer service to new employers before retirement age. His younger colleagues would then have benefitted from a significant redundancy payment of 21 months' pay, as well as being able to 'bank' their pension to take it as unreduced when they reached 60. They would also benefit from salary and a further pension from their new employment.

James Sweeney

186. James Sweeney was employed by HMRC from 1 April 1985 until 30 September 2020. His last role with HMRC was as a Revenue Officer, on a salary of £21,441.00. He accepted the poor pay due to job security and he did not expect the mass redundancies that have occurred over the past few years. He had continuous service of 35 years on termination. At the time of the termination of his employment he was aged 62 years and 11 months.

187. On termination of his employment, he received a redundancy payment of £12,369.90, which was capped at 6 months' pay, as he was over the age of 60.

This is lower than the amount he would have received if he had the same length of service and he was below the age of 60 at the time of termination of my employment.

188. There was limited correspondence and details from HMRC regarding his redundancy, and he was not told very much over the years. He did not raise a grievance regarding the discriminatory effect of the Civil Service Compensation Scheme for redundancy pay, as there was no real opportunity to do so. He only found out that he could actually take up a grievance against HMRC when his trade union representative told him 2 days before lockdown in March 2020. He worked from March to September 2020 from home, with limited communication about his redundancy.

189. His wife also worked for HMRC. She was made redundant in 2019, and so he had to take his maximum lump sum advance of his pension. They knew because of Covid that they would not be able to secure employment for some time. He was also concerned that he would have difficulty finding work because of his age.

190. He took the maximum lump sum from his pension, of £48,705.48, and his annual pension is £7,305.82.

191. He and his wife are struggling to survive financially as they still have 10 years left on their mortgage and bills to pay. He needs to find at least 3 years' salary to bridge the gap to his statutory (state) pension age of 66. His anticipated earnings for these 3 years would have been at least £64,323.00, subject to any pay rise, and he would have contributed more to his pension, allowing him to take a larger lump sum and secure a higher annual pension. His redundancy payment of £12,369.90 falls significantly short of the earnings he needs to sustain his living expenses. (The Tribunal notes that this takes no account of the lump sum that he received nor the ongoing annual pension).

192. Had he been given the opportunity, he would have worked for at least a further 10 years in order to pay his mortgage. He and his wife may need to sell their home if they cannot meet the mortgage payments, and they are living very carefully at present. They have reduced all their utility bills, made food savings, have a limited social life and take no holidays.

193. He has made a number of applications for various clerical jobs and coaching roles to find new employment, but he has been unsuccessful in securing any new employment. His search is hindered by the fact that they only have one car, and his wife needs to use their car to travel to her temporary new employment, which she managed to secure until Christmas 2021. Her salary helps towards their mortgage payments.

194. Mr Sweeney's position is that people of his age have a genuine grievance because if he had been 4 years younger his final redundancy figure would have been over £37,500. He also believes that his younger colleagues of aged 50 or above, with similar capabilities and experience to him, could have found new employment more easily than him due to their age, and the fact that they could provide a longer service to new employers before retirement age. He has heard

that several people younger than him have been able to secure full-time employment after receiving their full redundancy payment. His younger colleagues would benefit from a significant redundancy payment of up to 21 months' pay, as well as being able to 'bank' their pension to take it as unreduced when they reached 60. They would also benefit from salary and a further pension from their new employment.

Peter Hopkins

195. Peter Hopkins was employed by HMRC from 9 May 1977 until 30 June 2020. His last role with HMRC was as an Inspector of Taxes, on a salary of £34,997.00. He had continuous service of 43 years on termination. At the time of the termination of his employment he was aged 60 years and 8 months.

196. On termination of his employment, he received a redundancy payment of £17,498.50, which was capped at 6 months' pay, as he was over the age of 60. This is lower than the amount he would have received if he had the same length of service and he was below the age of 60 at the time of termination of his employment.

197. He challenged the age discriminatory impact of the of the Civil Service Compensation Scheme capping his redundancy pay from September 2019. He was informed that the Cabinet Office did not believe that it was discriminatory, as the purpose of the scheme was to provide a proportionate financial cushion to those who lose their jobs. They stated that there was less need for that financial cushion when an employee can draw a pension during the time that they are looking for new employment.

198. Following the judgment in *Elliott v Parliamentary and Health Service Ombudsman* in 2019, he raised the discriminatory impact of the CSCS on his redundancy pay again in February 2020. He lodged a formal grievance on 5 May 2020 asserting age discrimination. He asked HMRC to pay his full uncapped entitlement to redundancy pay. He was told on both occasions that the judgment in *Elliott* was subject to ongoing legal proceedings, and that the Cabinet Office had determined that the existing arrangements for redundancy terms would remain in force, and that his entitlement would be calculated in accordance with the existing terms.

199. Peter Hopkins took the maximum lump sum from his pension, of £55,558.44, and his annual pension is £18,519.48.

200. Subsequently, he applied for postman jobs, but was unsuccessful. He applied for a job as a supermarket home delivery driver and he was successful. This job was for 21.5 hours per week at about £9-£10 per hour. He has left this job, after approximately 3 months, as he found it not suitable due to the organisation of the home delivery service and his personal and family circumstances.

201. He has had to cut down on socialising, such as going to the pub and nights away, as well as postponed completing home improvements to his house, to accommodate his reduced earnings. He needed to find almost 6 years' salary to

bridge the gap to his statutory (state) pension age of 66. His anticipated earnings for these 6 years would have been at least £209,982.00, subject to any pay rise. He would have contributed more to his pension, allowing him to take a larger lump sum and secure a higher annual pension. He could have contributed a maximum to arrive at 45/80ths of his (final, pensionable) salary as a pension. His redundancy payment of £17,498.50 is much less than the earnings he requires to pay for normal living expenses and financial stability. (The Tribunal notes that this takes no account of the lump sum that he received nor the ongoing annual pension).

202. Given the opportunity, he would have worked beyond his scheme pension age (and he was already doing so) until the age of 66. In addition, because of contracting out of SERPS, he was also short of the NI contributions for a full state pension. If he had been 2 years younger when he was made redundant, his final redundancy figure would have been £61,244.75. He also believes that his younger colleagues of aged 50 or above, with similar capabilities and experience to him, have found new employment more easily than him due to their age, and the fact that they could provide a longer service to new employers before retirement age. His younger colleagues will benefit from a significant redundancy payment of 21 months' pay, as well as being able to 'bank' their pension to take it as unreduced when they reached 60. They would also benefit from salary and a further pension from their new employment.

Kathryn Kennedy

203. Kathryn Kennedy was employed with the Civil Service from 1 December 2004. She started work with HMRC on 21 July 2014. Her employment terminated on 28 February 2020. Her last role with HMRC was as Tax Officer, on a salary of £24,818.00. She had continuous Civil Service employment of 15 years on termination. At the time of the termination of her employment she was aged 63 years and 2 months.

204. On termination of her employment, she received a redundancy payment of £12,409.00, which was capped at 6 months' pay, as she was over the age of 60. This is lower than the amount she would have received if she had the same length of service and she was below the age of 60 at the time of termination of her employment.

205. Kathryn Kennedy did not raise a grievance about the age discriminatory effect of the redundancy payment as she did not feel, at that time, there would be any point in doing so. She rejected an offer of voluntary redundancy due to the discriminatory terms of the offer. If she had been offered voluntary redundancy on the same terms as a person under 60, she would have accepted it. Those in her office that accepted the voluntary redundancy offer left on 24 October 2019. By rejecting the offer and waiting for the compulsory redundancy notice, she was able to continue working until 28 February 2020 when the office closed. Therefore, although her redundancy payment was still 6 months' pay, she was able to continue in employment for a further 4 months.

206. She decided not to take a lump sum payment from her pension when her employment terminated as this would have reduced her annual pension. Her annual pension is £6,271.21.

207. Kathryn Kennedy has not looked for new employment since her redundancy. Due to Covid-19 the country went into the first lockdown 3 weeks after she left the employment of HMRC. Due to a health condition, she was advised to shield. Her grandson lives with her and he is partly financially dependent on her.

208. She needed to find almost 3 years' salary to bridge the gap to her statutory (state) pension age of 66. Her anticipated earnings for these 3 years would have been at least £74,454.00, subject to any pay rise, and she would have contributed more to her pension, allowing her to secure a higher annual pension. Her redundancy payment of £12,409.00 is much less than the earnings she requires to pay for normal living expenses and financial stability. She would have worked at least until she reached state pension age. She may have decided to work beyond that, but this is a decision she would have made nearer to reaching pension age.

209. With a pension of only £6,271.21, it has been necessary to use her redundancy payment towards everyday living expenses, and this is nearly all used up with a year still to go until she reaches state pension age. If she had been 4 years younger when she was made redundant, her final redundancy figure would have been over £24,818.00. She also believes that her younger colleagues of aged 50 or above, with similar capabilities and experience to her, could have found new employment more easily than her due to their age, and the fact that they could provide a longer service to new employers before retirement age. Her younger colleagues would then have benefitted from a significant redundancy payment of 21 months' pay, as well as being able to 'bank' their pension to take it as unreduced when they reached 60. They would also benefit from salary and a further pension from their new employment.

Adina Clarkson

210. Adina Clarkson was employed by HMRC from 25 October 1976 and her employment terminated on 29 May 2020. Her last role with HMRC was as a Business Coordinator, on a salary of £27,578.00. She had continuous employment service of 43 years on termination. At the time of the termination of her employment she was aged 60 years and 3 months.

211. On termination of her employment, she received a redundancy payment of £15,645.33, which was capped at 6 months' pay, as she was over the age of 60. This is lower than the amount she would have received if she had the same length of service, and she was below the age of 60 at the time of termination of her employment. She was not given any guidance regarding lodging a grievance about my redundancy pay from the union, and she does not recall HMRC flagging such issues on the lead up to redundancy.

212. Adina Clarkson decided to take the maximum lump sum payment of £78,436.85 from her pension when her employment terminated, and her annual pension is £11,765.53. She took the lump sum to meet immediate financial need that matched

her personal circumstances at the time. The decision was as an expedient to support her through the initial period without gainful employment.

213. Subsequently, she was offered a position by a former colleague. The timing of the availability of the post was fortuitous as her redundancy and the position becoming available occurred at around the same time. But for personal acquaintance with the hirer, she would not have been offered the job. As it is, the place of employment is considerably further travelling from her home compared to her place of work with HMRC. The rate of pay and other conditions fall short of those enjoyed prior to redundancy. She is currently living with her mother as she does not currently have sufficient funds to complete the renovation work on her own property.

214. Adina Clarkson needed to find almost 6 years' salary to bridge the gap to her statutory (state) pension age of 66. Her anticipated earnings for these 6 years would have been at least £165,468.00, subject to any pay rise. She would have contributed more to her pension, allowing her to take a larger lump sum and secure a higher annual pension. Her redundancy payment of £15,645.33 is much less than the earnings she requires to pay for normal living expenses and financial stability. She would have remained in her employment past pension age, given the opportunity. Her motivation in life is to do the best job possible, to always meet the expectations of her employer, and to support and assist colleagues, both senior and junior. The respect of her peers is important to her and makes her the person that she is. The loss of the job, through no fault of her own, has been a difficult experience to negotiate both financially and emotionally. Job satisfaction and sense of purpose would have kept her in employment for as long as possible.

215. If she had been a year younger when she was made redundant, she believes that her final redundancy figure would have been £27,578.00, representing the full 12 months entitlement under CSCS compulsory redundancy terms. She also believes that her younger colleagues of aged 50 or above, with similar capabilities and experience to her, have found new employment more easily than her due to their age, and the fact that they could provide a longer service to new employers before retirement age. Her younger colleagues will now benefit from a significant redundancy payment, as well as being able to 'bank' their pension to take it as unreduced when they reached 60. They would also benefit from salary and a further pension from their new employment.

Cabinet Office analysis to show the effect of the taper arrangement

216. To assess and test the basis on which the Scheme contains and operates the taper, detailed empirical analysis has been carried out by members of the Analysis & Insight team (A&I) within Cabinet Office, and has been incorporated into Mr Spain’s witness evidence. The Tribunal has not treated this evidence as being expert witness evidence for which leave would be required. It is set out in Annex 1 to Mr Spain’s statement. The analysis contained was carried out over a number of months and involved the workforce analysis team in A&I, quality assurance by an independent analyst, a senior analytical review group who approved the methodology, and the MyCSP data team.

217. In relation to Annex 1, the four key components considered in the analysis were: (i) Compensation payment (with and without taper); (ii) Access to pension and the lump sum entitlement; (iii) Loss of potential earnings and pension accrual from continued employment; and (iv) Potential loss in pension value from taking early access to pension.

218. The first two of these matters, taken collectively, show the cash value of the benefits (compensation under the CSCS, or the compensation that would have been available if there were no taper, and pension payments) available to employees dismissed on grounds of redundancy (or voluntary exit) at a given age, while the second two matters, taken collectively, show the potential loss suffered by such an employee. The loss is treated as 'potential' because it involves an assumption in every case that the employee in question would have continued working for the average duration of their working life expectancy and that she or he would not obtain alternative future employment during that period. The calculation of the benefits available to the employee also assume that the employee has no pension entitlement from employment other than in the Civil Service.

219. Annex 1 contains a glossary of terms, calculation of values and model assumptions which sets out, in broad terms, how compensation on voluntary or compulsory redundancy is calculated, along with an explanation of how the key "values" used in this analysis, such as pension and lump sum and potential loss from taking early pension access, are calculated. The value of these components was in large part calculated using the pension and compensation scheme rules and actuarial tables for the different Civil Service pension schemes as they would apply to employees at different ages. There are also documents [343-349, 455] which are publicly available data used in preparing this analysis.

220. The principal factor that needed to be estimated for the purpose of the analysis was the number of years, on average, that an employee would be expected to continue working in the Civil Service at different ages – what may be termed their 'working life expectancy'. This was required in order to make an estimation of average loss of potential earnings within the Civil Service on exiting at any given age, and to calculate the value of the pension that could be taken instead over the same period. The calculation of the 'working life expectancy' used to estimate these costs was based on the same methodology that the Office for National Statistics uses in calculating 'life expectancy', in order to ensure that the methods adopted were robustly tested and publicly available.

221. The data required was the rate at which people leave Civil Service employment at any given age. See "Exit rates by age from the Civil Service for employees with an NPA of 60 (2010-2018)" [457], which contains data used in this analysis. This shows, by reference to each year from age 50 to age 76+: (a) The number of employees in post in the Civil Service; (b) The number of exits; and (c) The 'exit rate', which is produced by way of arithmetical analysis of the preceding two figures. This document is a composite summary of information derived from a database containing millions of entries. In particular, the figures in the 'number in post' and 'number of exits' columns are extracted from this underlying database, which identify each individual employee in question. The rates of leaving employment in the Civil Service used in the analysis were calculated using data

taken from the Civil Service National Statistics collection. As this collection did not include data on pension scheme membership, the analysis assigned employees to pension schemes based on their date of entry to the Civil Service. The rates are calculated based on data including all exits from April 2010 to March 2018. They exclude more recent exits in order to remove employees who may have a normal pension age greater than 65 and are therefore not comparable to earlier years.

222. From this analysis it is possible to draw the following conclusions, which the Tribunal accepts.

223. The first analysis is that of “Pensions, potential lost earnings, and compensation”. This estimates the losses upon termination across a range of ages, and to compare that to the total benefits from the Compensation Scheme plus pension.

224. In this first analysis, total potential losses. are equal to the sum of the loss of potential earnings and the potential loss from taking early access to their pension. The loss of potential earnings represents what the employee would have received by way of salary and employer pension contributions had they remained in employment during the period of working life expectancy. The potential loss from taking early access to their pension represents the actuarial reduction that might apply to the pension value if the employee were to access their pension immediately after ending employment. The total benefits with taper (so compensation payment and the pension they would receive added together) with the taper applied. The analysis illustrates a compensation payment with the aper, which understandably reduces downwards from the point at which the taper is applied and the compensation is accordingly reduced as the employee approaches pension age. In comparison, a compensation payment without the taper applied is steady but slightly increasing with age up to a maximum, due to the terms of the statutory redundancy payment (which is the minimum that can be paid and which provide for a higher weighting on length of service with increasing age). It does not take account of additional accrual of length of service, only age-related changes. The analysis also included the pension the employee would have received during the period of working life expectancy when they would have otherwise continued working, and the lump sum where relevant; and also total benefits without the taper.

225. In graphical form, it can be seen that the total potential losses reduces as the employee approaches normal pension age, and in line with this reduction in loss the total benefits similarly reduces.

226. The second analysis addresses “Ratio of benefits to potential loss”. The Cabinet Office suggests that this ratio is a useful measure of the comparison between the total available benefits (comprising compensation plus pension) and the potential loss arising from early termination of employment. Its usefulness as a measure is increased because it is relatively unaffected by the level of salary or length of service in any particular case. This measure shows that without a taper, there could be situations where an individual received a package worth more to them than their likely potential loss had they continued in employment for the period of their working life expectancy.

227. The Cabinet Office analysis is then applied to each of the sample cases. The Tribunal notes the explanation provided by Mr Spain in general terms about this analysis.

228. The first individual analysis concerns ***Peter Hopkins***. In this first example, where the individual exited 8 months after normal pension age, he is estimated to have lost a potential £189,000 in future earnings. This is because he is estimated to have been likely to work for a further approximately 4.3 years. This is the annual salary and employer pension payments summed across the average years of continued employment. He has no loss related to pension because, at the time at which his employment was terminated, he was already past pension age and so entitled to payment of his pension in full, without actuarial reduction. After the taper was applied, his total benefits (compensation plus pension) amounted to £152,000. This comprised £17,499 in compensation (minimum payment of 6 months' salary because he was post pension age) and £134,000 in pension payments and lump sum (over the period of working life expectancy).

229. Together, these total benefits represent 81% of his potential loss. (This is the estimated benefits to potential loss ratio). Had no taper been applied in Mr Hopkins' case, his total benefits would have increased to £196,000, because of an increased compensation payment of £61,245. This would have produced a greater sum than his potential loss (a benefits to potential loss ratio of 104%). If the taper had not applied, depending on the circumstances of length of service and the terms of the pension scheme in question, there would be an increasing likelihood that the total benefits would be in excess of the estimated potential loss.

230. The second individual analysis concerns ***Anne Perry***. She exited 6 months before normal pension age and is estimated to have lost a potential £132,000, made up of £6,300 in potential pension loss and £125,000 from potential earnings lost. This is because she is estimated to have been likely to work for a further approximately 4.8 years. This is the annual salary and employer pension payments summed across the average years of continued employment. After the taper was applied, her total benefits (compensation plus pension) amounted to £102,000. This comprised £23,000 in compensation (six months plus six months being the number of months left to pension age) and £78,700 in pension payments and lump sum (over the period of working life expectancy).

231. Together, these total benefits represent 77% of her potential loss. (This is the estimated benefits to potential loss ratio). Had no taper been applied in Ms Perry's case, her total benefits would have increased to £119,000, because of an increased compensation payment of £40,250. This would have increased the benefits to potential loss ratio to 90%. If the taper had not applied, depending on the circumstances of length of service and the terms of the pension scheme in question, there would be an increasing likelihood that the total benefits would be in excess of the estimated potential loss.

232. The third individual analysis is that of ***James Sweeney***. He exited 2 years and 11 months after normal pension age. He is estimated to have lost a potential £98,000 in future earnings. This is because he is estimated to have been likely to

work for a further approximately 3.6 years. This is the annual salary and employer pension payments summed across the average years of continued employment. He has no loss related to pension because, at the time at which his employment was terminated, he was already past pension age and so entitled to payment of his pension in full, without actuarial reduction. After the taper was applied, his total benefits (compensation plus pension) amounted to £87,000. This comprised £12,370 in compensation (minimum payment of 6 months' salary because he was post pension age) and £75,100 in pension payments and lump sum (over the period of working life expectancy).

233. Together, these total benefits represent 89% of his potential loss. (This is the estimated benefits to potential loss ratio). Had no taper been applied in Mr Sweeney's case, his total benefits would have increased to £115,000, because of an increased compensation payment of £40,250. This would have produced a greater sum than his potential loss (a benefits to potential loss ratio of 118%). If the taper had not applied, depending on the circumstances of length of service and the terms of the pension scheme in question, there would be an increasing likelihood that the total benefits would be in excess of the estimated potential loss.

234. The fourth individual analysis is that of ***Paul Conlon***. He exited 11 months before normal pension age and is estimated to have lost a potential £233,000, made up of £14,000 in potential pension loss and £219,000 from potential earnings lost. This is because he is estimated to have been likely to work for a further approximately 4.9 years. This is the annual salary and employer pension payments summed across the average years of continued employment. After the taper was applied, his total benefits (compensation plus pension) amounted to £182,000. This comprised £49,579 in compensation (six months plus eleven months being the number of months left to pension age) and £132,000 in pension payments and lump sum (over the period of working life expectancy).

235. Together, these total benefits represent 78% of his potential loss. (This is the estimated benefits to potential loss ratio). Had no taper been applied in Mr Conlon's case, his total benefits would have increased to £193,000, because of an increased compensation payment of £61,245. This would have increased the benefits to potential loss ratio to 83%. If the taper had not applied, depending on the circumstances of length of service and the terms of the pension scheme in question, there would be an increasing likelihood that the total benefits would be in excess of the estimated potential loss.

236. The fifth individual analysis is that of ***Kathryn Kennedy***. She exited 3 years and 2 months after normal pension age. She is estimated to have lost a potential £111,000 in future earnings. This is because she is estimated to have been likely to work for a further approximately 3.5 years. This is the annual salary and employer pension payments summed across the average years of continued employment. She has no loss related to pension because, at the time at which her employment was terminated, she was already past pension age and so entitled to payment of her pension in full, without actuarial reduction. After the taper was applied, her total benefits (compensation plus pension) amounted to £34,000. This comprised £12,409 in compensation (minimum payment of 6 months' salary because she was

post pension age) and £22,000 in pension payments and lump sum (over the period of working life expectancy).

237. Together, these total benefits represent 31% of her potential loss. (This is the estimated benefits to potential loss ratio). Had no taper been applied in Ms Kennedy's case, her total benefits would have increased to £47,000, because of an increased compensation payment of £24,818. This would have produced a greater sum than her potential loss (a benefits to potential loss ratio of 42%). If the taper had not applied, depending on the circumstances of length of service and the terms of the pension scheme in question, there would be an increasing likelihood that the total benefits would be in excess of the estimated potential loss.

238. The sixth individual analysis is of ***Adina Clarkson***. She exited 3 months after normal pension age. She is estimated to have lost a potential £153,000 in future earnings. This is because she is estimated to have been likely to work for a further approximately 4.4 years. This is the annual salary and employer pension payments summed across the average years of continued employment. She has no loss related to pension because, at the time at which her employment was terminated, she was already past pension age and so entitled to payment of her pension in full, without actuarial reduction. After the taper was applied, her total benefits (compensation plus pension) amounted to £146,000. This comprised £15,645 in compensation (minimum payment of 6 months' salary because she was post pension age) and £130,000 in pension payments and lump sum (over the period of working life expectancy).

239. Together, these total benefits represent 95% of her potential loss. (This is the estimated benefits to potential loss ratio). Had no taper been applied in Ms Clarkson's case, her total benefits would have increased to £158,000, because of an increased compensation payment of £27,578. This would have produced a greater sum than her potential loss (a benefits to potential loss ratio of 103%). If the taper had not applied, depending on the circumstances of length of service and the terms of the pension scheme in question, there would be an increasing likelihood that the total benefits would be in excess of the estimated potential loss.

240. Further analysis by the Cabinet Office, and adopted by Mr Spain in his witness evidence, shows on a month-by-month basis leading up to normal pension age 60 how the effect of the taper maintains a relatively constant relationship between the losses and the benefits. The losses are tracked at a relatively consistent proportion, falling within a relatively narrow range of 79-81%. By contrast, what would have happened without the taper? From the point at which the taper would have applied (after 58 years and 9 months, which is 15 months before normal pension age of 60), the compensation benefits would remain constant while the losses decrease until the benefits are greater than the losses. Again, this effect is summarised in a range of 79-104%. The percentage increases month by month from the point at which the taper would have applied.

241. Further analysis expresses the same data in the form of the benefits to potential loss ratio. It can be seen that the taper keeps this ratio constrained in a relatively narrow range between 79% and 81%. In contrast, a lack of tapering would allow the ratio to rise to 104% and to do so in a way that meant that the ratio of

compensation would increase substantially in accordance with age at the date of termination.

242. The data can also be expressed in the form of the benefits to potential loss ratio for all the sample cases. The aim and effect of the taper is to keep the ratio within a much narrower range than would otherwise be the case and to maintain the compensatory purpose of the Scheme. In the absence of the taper, employees close to or beyond the normal pension age would be expected to receive proportionally more compensation relative to their losses – in some cases, close to or above the full value of their expected continued employment.

243. In the Cabinet Office's assessment, this analysis demonstrates that employees who exit on redundancy grounds are proportionately compensated in relation to their possible financial loss. By using a tapered compensation package, the gap between the potential loss and benefit is relatively consistent when considered in terms of the percentage of compensation to potential loss. By contrast, if there were no taper, there would be disproportionate compensation available to those employees whose employment was terminated close to, at or above normal pension age. The analyses demonstrate there could be situations where an individual received a package worth more to them than their likely potential loss had they continued in employment for the period of their working life expectancy, but that this is far more likely when there is no taper. This does not sit well with the compensatory purpose of the scheme which flows from the 1972 Act, and the fact that the compensation scheme was originally an integrated part of the pension scheme. This shows it is right to consider pension and compensation together as a total benefit.

Actuarial reduction buy-out (ARBO)

244. There is a further option available which sits alongside the taper arrangements. Members of the Scheme who are over minimum pension age (for the sample cases in Classic scheme, this is 50) but below normal pension age (for the Classic scheme, this is 60) have the option of drawing their pension early when leaving the Civil Service on grounds of redundancy. In such a situation, there would be an actuarial reduction to the pension lump sum and the pension itself, to take account of the value of obtaining that early access.

245. However, it is possible to use the CSCS compensation payment to "buy out" that actuarial reduction so as to achieve access to the unreduced lump sum and pension. The Civil Service Pensions website has an ARBO calculator (that is, an actuarial reduction buy-out calculator) to help members understand their options and see what the buy-out would cost in their case. There is a guidance page that accompanies the calculator [349].

246. The HMRC guidance (the Voluntary Redundancy Q&A) explained the options to its employees as follows:

(1) "If you are over minimum pension age but below normal pension age on your last day of service you may choose to -

- keep your compensation payment and preserve your accrued pension

- keep your compensation payment and take your pension actuarially reduced
- buy-out early access to an unreduced pension using some or all of your compensation payment. If your compensation payment does not cover the full buy-out cost, where the Civil Service Compensation Scheme rules allow it, HMRC will top up the difference.
- take your pension actuarially reduced at any time after you leave HMRC up to reaching normal pension age, or buy-out the reduction using your own money."

247. So far as the sample cases are concerned, each individual received correspondence from Civil Service Pensions with "pension benefit statements" showing indicative figures for their annual pension and pension lump sum. See for example [680-687]. This letter pointed out the options, including where to find the ARBO calculator.

248. It appears that Anne Perry opted to take a reduced early pension, without ARBO [692-713] (that is. without buying out the actuarial reduction). Anne Perry chose not to take an additional pension lump sum, meaning she did not give up any of her pension for a higher lump sum [712].

249. Paul Conlon's letter from Civil Service Pensions with "pension benefit statements" showing indicative figures for their annual pension and pension lump sum setting out the options available to him is at [727-733]. The letter to Mr Conlon also pointed out the options, including where to find the ARBO calculator [733]. He opted for a compensation payment and pension on reduced terms (subject to the Guaranteed Minimum Pension test). He confirmed that he wished to take his compensation payment and to take his pension benefits, on the expressed understanding that these benefits will be reduced for early payment (subject to the Guaranteed Minimum Pension test) [734-762]. He also chose to take the maximum pension lump sum in exchange for a reduced monthly pension payment [761].

250. The Cabinet Office has calculated the cost of ARBO in relation to the cases of Anne Perry and Paul Conlon, based both on their actual date of leaving but also as if they had left 15, 12, 9, 6 and 3 months before their normal pension age of 60. Comparing the ARBO cost and the amount of compensation they would have received if they had left at these dates, it can be seen that there is a correlation between the ARBO costs and compensation amounts. That is, as the ARBO cost increases, so higher compensation is paid (and available for the member to use for ARBO if they wish).

Relevant legal principles

251. The parties put before the Tribunal a combined bundle of authorities comprising 948 electronic pages. Counsel for both parties took us to those authorities as appropriate.

252. The relevant legislation is to be found in the Superannuation Act 1972 sections 1-2; the Employment Rights Act 1996 section 191; Council Directive 2000/78/EC;

the Equality Act 2010 sections 13, 39, 61, 149 and 156; the Equality Act (Age Exceptions for Pension Schemes Order 2010) (SI 2010/2133).

253. The case law authorities are to be found in: *Barry v Midland Bank plc* [1999] IRLR 581; *Hockenjos v Secretary of State for Social Security* [2004] EWCA Civ 1749, [2005] IRLR 471; *R (Carson) v Secretary of State for Work and Pensions* [2005] UKHL 36, [2006] 1 AC 173; *Hardy & Hansons plc v Lax* [2005] EWCA Civ 846, [2005] ICR 1565; *R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293, [2006] 1 WLR 3213; *Palacios de la Villa v Cortefiel Servicios SA* [2007] IRLR 989; *Chief Constable of the West Midlands v Blackburn* [2008] ICR 505; *MacCulloch v Imperial Chemical Industries plc* [2008] ICR 1334; *Loxley v BAE Systems Land Systems (Munitions & Ordnance) Ltd* [2008] ICR 1348; *R (Public and Commercial Services Union) v Minister for the Civil Service* [2010] EWHC 1027, [2010] ICR 1198; *Kraft Foods UK Ltd v Hastie* [2010] ICR 1355; *R (PCS) v Minister for the Civil Service* [2011] EWHC 2041 (Admin), [2012] 1 All ER 985; *Seldon v Clarkson Wright & Jakes* [2012] UKSC 16, [2012] ICR 716; *HM Land Registry v Benson* [2012] IRLR 373; *Heron v Sefton Metropolitan Borough Council*, UKEAT/0566/12/SM; *Lockwood v Department of Work and Pensions* [2013] EWCA Civ 1195, [2014] ICR 1257; *BAE Systems (Operations) Ltd v McDowell* [2018] ICR 214; *R (PCS) v Minister for the Cabinet Office* [2017] EWHC 1787 (Admin), [2018] ICR 269; *Air Products plc v Cockram* [2018] EWCA Civ 346, [2018] IRLR 755; *Lord Chancellor v McCloud* [2018] EWCA Civ 2844, [2019] ICR 1489; *Aldwyck Housing Group Ltd v Forward* [2019] EWCA Civ 1334, [2020] 1 WLR 584; *Elliott v PHSO*, 2200464/2018, 19 November 2019, ET; *Luton Community Housing Ltd v Durdana* [2020] EWCA Civ 445, [2020] IRLR 27; *Coombes v DVSA*, 1401762/2019, 25 November 2020, ET; Decision of EAT on sift (7 June 2021); *Gray v University of Portsmouth*, UKEAT/0242/2020, 24 June 2021.

254. Reference was also made to the Equality and Human Rights Commission Statutory Code of Practice and the Supplement to EHRC Employment Statutory Code of Practice.

255. The key provision is section 13 of the Equality Act 2010. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others (section 13(1)). If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim (section 13(2)).

256. A very helpful commentary on the case law appears in IDS Employment Law Handbook, Volume 4, *Discrimination at Work*, Chapter 27 (Retirement) starting at section 27.30 (Preventing windfall from enhanced redundancy schemes). The Tribunal draws upon that commentary as follows, but simply for the purpose of capturing a useful summary of otherwise quite extensive law.

257. Where an employer caps its enhanced redundancy payments by reference to the amount employees would have earned if they had worked until their normal retirement date, this will evidently have a detrimental impact on older employees, who thereby receive a lower payment than they might otherwise have done. In

such cases employers have sought to justify the cap by reference to the aim of preventing older workers from receiving a windfall.

258. *Loxley v BAE Systems Land Systems (Munitions and Ordnance) Ltd* [2008] ICR 1348 EAT concerned a scheme under which entitlement to a redundancy payment was based mainly on length of service. However, only those under 60 were eligible, and those aged between 57 and 60 had their payments reduced according to tapering provisions. The rationale for excluding those over 60 was that until 1996 employees were required to retire at 60 and could do so on a full pension. The tapering requirements and the exclusion of the over-60s were designed to prevent those close to retirement from receiving a windfall in the event that they were made redundant. In 1996 the retirement age was raised to 65, although until 1 April 2006 employees could still take their pension at 60 without incurring a penalty to their accrued benefits.

259. An employment tribunal rejected the claim, finding the scheme justified by the need to prevent employees close to retirement receiving a windfall. The tribunal also thought that the fact that the scheme had been agreed in consultation with trade unions went some way to supporting the contention that it was justified.

260. The tribunal's decision was overturned on appeal. According to the EAT, the tribunal had not fully engaged with the question of proportionality. Nor could it be said that the tribunal had undertaken the necessary analysis of financial information to determine whether L's exclusion from the scheme achieved a legitimate aim. The EAT stated that the fact that an employee is entitled to immediate benefits under a pension scheme will always be a highly relevant factor that an employer can properly consider when determining what redundancy rights, if any, the employee ought to receive. No doubt in some, perhaps many, cases it will justify excluding such an employee from the redundancy scheme altogether. However, this is not inevitably the case. Ultimately, it must depend upon the nature of both schemes. The fact that an agreement is made with the trade unions is potentially a relevant consideration when determining whether treatment is proportionate. Plainly, the imprimatur of the trade union does not render an otherwise unlawful scheme lawful, but any tribunal will rightly attach some significance to the fact that the collective parties have agreed a scheme which they consider to be fair. There is, however, always the risk that the parties will have been influenced, consciously or unconsciously, by traditional assumptions relating to age. Hence the reason why any justification relied upon by the employer, even when the treatment under consideration is supported by the union, must be subject to critical appraisal.

261. In *Kraft Foods UK Ltd v Hastie* [2010] ICR 1355 the EAT held that the imposition of a cap was objectively justified as a proportionate means of achieving the legitimate aim of preventing the employee from receiving a windfall. Having examined the scheme in question – which provided that the maximum amount payable on redundancy should not exceed the amount the employee would have earned if he or she had remained in employment until the normal retirement age of 65 – the EAT considered that its purpose was to compensate employees who took voluntary redundancy for the loss of the earnings they had a legitimate expectation of receiving if their employment had continued. Although redundancy schemes –

whether contractual or statutory – do not directly link the payments to the loss, the EAT considered that this anomaly is long-established and rooted in industrial practice. Given the scheme's purpose, unless a cap was incorporated into the scheme, payments to employees who were close to retirement would exceed what was necessary to cover the amount of their future loss of earnings. It necessarily followed that it was a legitimate aim to prevent such excess compensation. On the question whether the cap was a proportionate means of achieving the aim of preventing a windfall, the claimant argued that it essentially performed the same role as a taper, such as had existed in the statutory redundancy scheme prior to the introduction of the Age Regulations. Since the taper had been removed at the time unjustified age discrimination in employment was made unlawful, the claimant contended that the Government had recognised that a practice of this kind could not be justified. The EAT acknowledged that there were similarities between the cap and a taper. However, it did not accept the claimant's argument. It was not safe to infer that the Government had considered the practice of tapering to be unjustifiable. The cap was a more accurate means of preventing a windfall than a taper. Since a cap and a taper were the two common means of achieving this aim, it followed that the more accurate means – the cap – was proportionate. The imposition of the cap was therefore justified. See also *Odar v Baxter Deutschland GmbH* [2013] 2 CMLR 13 ECJ to like effect.

262. In *BAE Systems (Operations) Ltd v McDowell* [2018] ICR 214 the EAT accepted that "the landscape had changed with the removal of the default retirement age", such that it could not be assumed that redundancy payments to employees aged 65 and over would constitute a "windfall". An employment tribunal was therefore entitled to reject BAE Ltd's argument that tapering provisions in its severance scheme – which culminated in a cap on redundancy payments for those aged 65 and over – were designed to prevent employees from receiving a "windfall". BAE Ltd had adduced no evidence to show that it could reach any conclusions as to the age at which employees might choose to retire and draw their pensions. The EAT held that a cap for employees aged 65 and over might still be "readily justified" – given their immediate potential entitlement to pension benefits – but this was not inevitably the case. The tribunal had found that the payment cap imposed by BAE Ltd was not objectively justified. In doing so, however, it had examined the cap in isolation as against each individual aim relied upon by BAE Ltd. Instead, it should have examined it in the context of the severance scheme as a whole, and as against those aims taken collectively. This error rendered its decision unsafe, since BAE Ltd's case was predicated on a need to find the best way of achieving a number of different (but equally legitimate) aims within the context of the whole scheme.

263. While enhanced redundancy schemes that cap or taper payments by reference to a fixed retirement age are likely to become less common, schemes that align entitlement to an enhanced redundancy payment with the state pension age may become more popular. However, the IDS commentary notes, any employer considering such an approach should take note of the ECJ decision in *Dansk Jurist-og Okonomforbund v Indenrigs-og Sundhedsministeriet* [2014] ICR 1. There, it was held that a Danish law which guaranteed three years' pay in the event that a civil servant was made redundant but excluded those aged 65 or over because they were eligible to receive a pension amounted to unjustified age discrimination.

Although the ECJ accepted that the law was an appropriate means of achieving the Danish Government's legitimate employment policy and labour market objectives, it held that the law went further than was necessary to achieve those aims. In particular, it denied the guaranteed pay to a worker who was eligible to receive his or her pension but wanted to continue working, and defer receipt of the pension, until the age of 70. Less discriminatory alternatives to an automatic cut-off at age 65 – such as denying the guaranteed pay to those who were in actual receipt of, rather than merely eligible for, their pension – would have achieved the same result.

264. The present Tribunal has also had regard to the annotated commentary on sections 13(1) and 13(2) in *Harvey on Industrial Relations and Employment Law* Division Q Statutes [1466]. The *Harvey* editors note that where an employer relies on several legitimate aims (to justify an overall severance policy/package) it is not enough for the tribunal to apply the proportionality test to each individually. It must also ultimately apply a holistic approach to the package overall: *BAE Systems (Operations) Ltd v McDowell* [2018] ICR 214 EAT. In doing so, it must apply the synthesis set out by Lady Hale in *Seldon v Clarkson Wright & Jakes* [2012] UKSC 16, [2012] IRLR 590, [2012] ICR 716 between the EU case law (emphasising the state's margin of appreciation) and the domestic case law (emphasising the need to judge individual cases and to balance the effects on the parties and whether there were any other less discriminatory options). In doing so, it is important that evidence is produced, as a "visceral instinct" or an assertion that the means adopted are "felt right" will not be enough: *Lord Chancellor v McCloud* [2018] IRLR 284 EAT; *Sargeant v London Fire and Emergency Planning Authority* [2018] EWCA Civ 2844, [2019] IRLR 477 (tapering provisions favouring older workers to ease in changes in pension scheme held not justified because of the absence of actual evidence). Contrast *Lockwood v Department of Work and Pensions* [2013] EWCA Civ 1195, [2014] IRLR 1257 where the department did lead "full and careful evidence" as to why it had introduced a redundancy scheme even though it had elements of age discrimination). Ultimately, the question whether justification has been established is one of fact for the particular tribunal.

265. The editors of *Harvey* also note that one of the peculiarities of age discrimination is the ability to justify direct discrimination. This has led to arguments that the defence of justification to direct discrimination must be construed as being narrower than the usual defence of justification to indirect discrimination. The Supreme Court has held that the defence for direct discrimination is indeed narrower: *Seldon v Clarkson Wright and James* [2012] IRLR 591, [2012] ICR 716, SC. In particular, an employer seeking to justify direct discrimination must do so not just by showing a legitimate aim in the sense of a requirement of its own business, but also that it comes within the "social objectives" set out in art 6 of the Directive, namely those relating to "legitimate employment policy, labour market and vocational training objectives". The employer must provide both macro and micro justification. If this can be done, the legitimate aim must then be shown to be pursued by proportionate means, in the sense of being both appropriate and necessary: *Homer v Chief Constable of West Yorkshire*.

266. In *Seldon* Lady Hale set out the factors that in the EU case law have been held capable of justifying direct discrimination generally and retirement ages in

particular. She then categorised them as coming under two basic headings – "inter-generational fairness" (including promoting employment for young employees, staff planning, ensuring a mix of generations, rewarding experience and facilitating the participation of older workers) and "dignity" (in particular, avoiding the need to dismiss older employees for incapability).

267. This Tribunal reminds itself that the *IDS* and *Harvey* commentaries are ultimately no substitute for a direct engagement with the statutory provisions and the totality of the case law. The Tribunal is especially grateful for the way in which counsel took it to the relevant passages establishing the central principles of the numerous authorities.

Closing submissions

268. Mr Tolley QC and Mr Mitchell prepared and presented fresh written submissions in closing, which they supplement with oral submissions, which the Tribunal has in its record of the proceedings.

Mr Mitchell

269. Mr Mitchell used his closing submissions to set out the provenance of figures he gave in oral evidence regarding the median retirement age in the Civil Service (paragraph 2 and 23). He reminded the Tribunal of the issues by reference to section 13 of the Equality Act (there is also a reference to section 19, which was not developed further, and which was not a basis upon which these sample case had proceeded); the four categories of sample cases; and the individual sample claimants (paragraphs 3-5). He revisited the agreed facts (paragraphs 6-21).

270. Mr Mitchell also addressed the question of whether the Tribunal's judgment on the sample cases will apply to all claimants (paragraph 22). This is perhaps a question which will need to be revisited once the judgment has been promulgated and digested. For now, the Tribunal simply notes the claimants' position that it appears there are some possible anomalies arising from the specific circumstances of other employers who are engaged in this litigation. Depending on which aims are determined to exist in this case, and the findings on the legitimacy of any such aims, it may be that the specific circumstances of other employers give rise to separate issues which will not be caught by the facts in the sample cases. It should be noted that only HMRC's guidance and information has been supplied to enable the factual determinations in these sample cases and the parties have jointly selected only employees from that one department.

271. Helpfully, Mr Mitchell then set out his assessment of the state of the witness evidence following examination of it (paragraphs 24-39). That is of some assistance to the Tribunal in its assessment of the witness evidence set out earlier above.

272. In response to a question raised by the Tribunal during the evidence, Mr Mitchell addressed the relevance of the statutory redundancy payment scheme to the Civil Service Compensation Scheme (paragraph 40). He also addressed the characteristics of the hypothetical comparators (paragraphs 41-47) and the

discriminatory impact of the application of the CSCS upon the sample claimants (paragraphs 48-52). Some additional information on age bands; numbers of VE, VR and CR terminations; and comparative costs are set out in paragraphs 53-60. All of this is of assistance to the Tribunal.

273. The main thrust of Mr Mitchell's submissions on the substantive issues is to be found in paragraphs 61-140. The Tribunal has incorporated those submissions within its discussion below.

Mr Tolley QC

274. Mr Tolley's written submissions commence with an introduction and overview at paragraphs 1-8. The Tribunal does not reproduce those submissions here, but it has paid particular attention to Mr Tolley's assessment of what these claims are about and what they are not about. At paragraphs 9-42 Mr Tolley addresses the evidence and the facts. Of particular assistance is his assessment of the witnesses and their evidence at paragraphs 10-19. That is of some assistance to the Tribunal in its assessment of the witness evidence set out earlier above. At paragraphs 20-24 Mr Tolley addressed some points of detail regarding the evidence of Kathryn Kennedy and Anne Perry.

275. The Tribunal is particularly grateful for the revisiting in tabular form at paragraphs 25-30 of the analysis by value of financial contributions to and benefits under the PCSPS (see, in particular, paragraph 27). This analysis had been developed in cross-examination of the sample claimants.

276. Mr Tolley noted that the claimants accepted the fairness of their dismissals (paragraph 31); the irrelevance of specific individual circumstances (paragraph 32); the history of the various Judicial Review proceedings brought by the PCS trade union (paragraph 33); the extent of trade union agreement to the material provisions of the CSCS (paragraphs 34-37); and the evidence in *Elliott* (paragraphs 38-42). The Tribunal notes and accepts these particular submissions.

277. Mr Tolley's submissions then took the Tribunal to the provisions of the CSCS scheme, including its compensatory purpose; its integration with the PCSPS; and a detailed analysis of the CSCS provisions (paragraphs 43-58). The Tribunal was greatly assisted by this section of the submissions. Mr Tolley also revisited the relevant law in paragraphs 59-76 of his submissions.

278. The main thrust of Mr Tolley's submissions on the substantive issues is to be found in paragraphs 77-108. The Tribunal has incorporated those submissions within its discussion below.

Discussion

Introduction

279. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others (Equality Act 2010 section 13(1)). The respondents have conceded potential

liability under section 13(1), but subject to their possible defence under section 13(2): If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

280. The ultimate question for the Tribunal is whether the respondents have made out their "justification defence". They are two key elements to this question: (1) Do the Taper and Minimum Payment provisions have a legitimate aim or aims? and (2) If so, are they a proportionate means of achieving that aim or aims? The burden of proof is upon the respondents, who rely upon the evidence of Mr Spain in that respect. The Tribunal agrees with Mr Tolley's submission, on behalf of the respondents, that Mr Spain's evidence was cogent and that it was reinforced in cross-examination. The Tribunal had confidence in his evidence.

281. Mr Tolley asks the Tribunal, as a result, to accept the propositions that: (1) Each of the Taper and Minimum Payment provisions is a proportionate means of achieving a number of legitimate aims as part of the overall structure created by the CSCS and the PCSPS; (2) The measures adopted are reasonably necessary to achieve the ends in question; and (3) The reasonable needs of HMRC (as part of the Civil Service as a whole) outweigh the discriminatory effect of the Taper and Minimum Payment provisions.

Legitimate aim

282. If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim (Equality Act 2010 section 13(2)).

283. The legitimate aims on which the respondents rely are the seven such aims set out in its amended response and in the opening submissions. So far as the Taper is concerned, the key aims are (1)-(3). So far as the Minimum Payment provisions are concerned the key aims are (1) and (4). Mr Tolley submits that these are all legitimate; that each forms a social policy objective of a public interest nature; that none concern any purely individual reason particular to either the employer or the employee; and that there is no requirement that the aims should have been articulated, either in this way or at all, at the time that the measures were first adopted. See paragraphs 77-87 of his closing submissions.

284. Addressing aim (3) in particular – avoiding a "cliff-edge" effect at normal pension age, whereby compensation might be paid in full up to that date, and then reduced thereafter to the minimum compensation of 6 months' pay (subject to 6 years' service) – Mr Tolley submits that the Taper ensures that an employee does not receive "full" compensation up to normal pension age, followed by a steep drop to a minimum level at or after normal pension age. It is said that this is about maintaining equity between employees as their age becomes more closely proximate to normal pension age. If one were to remove the Taper, but not the Minimum Payment provisions of the CSCS, it is submitted that this undesirable outcome would ensue. If one were to remove both provisions, then it is acknowledged that there would no longer be any "cliff-edge" problem to meet, albeit that one would then face a different set of issues (see below) arising from the

fact that a much older employee would then receive the same compensation as a much younger one, notwithstanding the obvious difference in their respective positions.

285. Mr Tolley further submits that the other aims identified are still relevant and inform the chosen means of implementation of the key aims. It is acknowledged that the implementation of aims (5)-(7) could produce any number of possible solutions. For example, as was put to Mr Spain, and he accepted, one could achieve aim (7) of clarity and transparency by the abolition of the Taper and Minimum Payment provisions. Equally, one could achieve the same aim by paying no compensation at all to a person at or above normal pension age. The important point for present purposes, Mr Tolley submits, is that the design and operation of the Taper and Minimum Payment provisions should, in meeting their key aims, also satisfy aims (5)-(7). The respondents' case is that they do just that.

286. Mr Tolley also submits that it is not clear whether the claimants' case involves a dispute that there is any legitimate aim in relation to the provisions in question. The cross-examination of Mr Spain on the premise did not appear to seek to suggest that that the aims on which the respondents rely are not genuine.

287. Dealing with this last point first, it does appear to the Tribunal that Mr Mitchell, on behalf of the claimants, is challenging the genuineness of the respondents' purported aims. See paragraphs 61-71 of his closing submissions. He challenges the aims as not being based upon conscious decisions. There is a suggestion of *ex post facto* rationalisation. Mr Mitchell questions the relevance of Mr Spain giving evidence rather than a relevant Minister. He casts doubt upon the provenance of the aims given that reliance upon them has not been consistent, as can be seen in the different approach taken before the employment tribunals in *Lockwood* and in *Elliott*. He deprecates Mr Spain's reliance on the table of Exit Rates by Age from the Civil Service for Employees with an NPA of 60 (2010-2018) [457] and see Mr Mitchell's closing submissions at paragraph 69.

288. In an attractive submission at paragraph 71 of his submissions, Mr Mitchell submits that (an implicitly different set of) genuine aims have been identified with a provenance that is established in formal documentation, being: (a) *Fairness for All: Proposals for the Reform of the Civil Service Compensation Scheme* (Cabinet Office, 31 July 2009) [283]; (b) *Consultation on Reform of the Civil Service Compensation Scheme* (Cabinet Office, 8 February 2016) [1002]; (c) *Equality Analysis: Civil Service Compensation Scheme Reform* (Cabinet Office, June 2016) [1022]; (d) HMRC Intranet Guidance on Exits [627]; and (e) Civil Service Compensation Scheme: Response to Consultation on Proposed Reform of the Civil Service Compensation Scheme (Cabinet Office, 26 September 2016) [1035]. Mr Mitchell identifies as the possible genuine aims, in his contention, as being: (1) To encourage VE/VR; (2) The Scheme should be operated with dignity and security; (3) To provide compensation; and (4) The Government has a stated aim to support people to work longer.

289. Mr Mitchell goes further, at paragraphs 72-73 of his closing submissions, in submitting that aims relied upon by the respondents are "outdated". The argument is that the formal documentation cited immediately above has consistently and

repeatedly recorded the scheme and aims as failing to deliver both as a scheme and against its aims. He argues that, if the aims are not being delivered, then they are not aims which are being genuinely pursued. Mr Mitchell then takes the Tribunal through each of the seven purported aims, one by one, to attack the genuineness of each aim (paragraphs 75-124).

290. Attractive though these submissions are, the Tribunal is not ultimately persuaded by them, at least so far as they address the genuineness of the aims. It does not accept that only a Minister could give evidence as to the respondents' purported legitimate aims. Aims can ebb and flow with changes of Ministers and of governments. The Cabinet Office is the custodian of the schemes and Mr Spain is the senior civil servant with a general oversight of those schemes. The Tribunal did not doubt that he gave his evidence carefully and with due regard to his responsibility as a witness. He was undoubtedly in the best position to attest to the aims of the schemes, changing though they might be over time, including at different stages of the litigation history of challenges to the schemes.

291. The Tribunal also does not accept that the case law lends support to the proposition that if the purported aims of the scheme are not being delivered, then they are not aims which are being genuinely pursued. Naturally, this puts the Tribunal on alert as part of its scrutiny of the respondents' aims and their legitimacy, but it does not persuade the Tribunal that the aims are not genuine or that an employer cannot pursue stated aims at the same time as making efforts to reform the scheme that support those aims. Nor is it necessary to conduct a word search of the key documents or scheme rules in order to find references to the purported aims (the futility of doing so is perhaps illustrated in the extreme in the point made by Mr Mitchell in paragraphs 86 and 99 of his closing submissions – the search for the words "bridge" and "cliff").

292. As the Supreme Court in *Seldon* establishes at paragraph 59 of the law report, the "fact that a particular aim is capable of being a legitimate aim … is only the beginning of the story. It is still necessary to inquire whether it is in fact the aim being pursued." However, "the aim need not have been articulated or even realised at the time when the measure was first adopted. It can be an ex post facto rationalisation". Citing the EAT decision in *Seldon*, a "tribunal is entitled to look with particular care at alleged aims which in fact were not, or may not have been, in the rule-maker's mind at all. But to treat as discriminatory, what might be a clearly justified rule on this basis would be unjust, would be perceived to be unjust, and would bring discrimination law into disrepute". The Supreme Court continues at paragraph 60: "There is in fact no hint in the … cases that the objective pursued has to be that which was in the mind of those who adopted the measure in the first place … [While] it has to be the actual objective, this may be an ex post facto rationalisation".

293. The Tribunal accepts that the respondents' aims are genuine. Are they legitimate? Taking each in turn.

294. (1) Providing appropriate and reasonable compensation to employees who are dismissed on the grounds of redundancy/voluntary exit, in circumstances where persons in Crown employment have no statutory right to a redundancy payment,

appears to the Tribunal to be both genuine and legitimate. The statutory redundancy scheme does not apply to civil servants, but the CSCS and PCSPS seek to ensure that civil servants are not worse off than any other public sector or private sector employee who is made redundant, whether compulsorily or voluntarily. Indeed, civil servants are more likely to be placed in a better position under the schemes. The Tribunal does not accept that the words "appropriate and reasonable" either cast doubt upon the genuineness of the aim or serve to water down those aims or to reduce (or to justify reduction of) compensation payable to civil servants. The Tribunal also accepts that this is a legitimate aim.

295. (2) Bridging the gap (if any) between dismissal and normal retirement age, at which date the employee is entitled to receive a full pension. The Tribunal accepts the obvious distinction between the age at which an employee might be expected or required to retire and the age at which they qualify to receive a pension. The Tribunal also accepts that the term "full pension" is properly to be understood as meaning the pension to which the employee has qualified to receive by reference to their age and length of service and not otherwise reduced (for example, for early or accelerated receipt).

296. There was undoubtedly some confusion about the phrasing of this aim and the way in which it was described in the evidence. This was tested in the cross-examination of Mr Spain and in re-examination. The Tribunal has no doubt that this aim in practice and in principle is about bridging the gap, if any, between dismissal and normal pension age, as Mr Tolley QC made clear in his oral submissions.

297. The Tribunal does not accept that this aim "ignores" the loss of employment, as Mr Mitchell suggests at paragraph 84 of his closing submissions. Compensation for loss of employment is an important, but not exclusive, feature of the scheme. The Tribunal's attention has not been diverted away from the purpose of the schemes and what this particular aim is designed to achieve. Despite Mr Mitchell's submissions at paragraphs 88-97 of his closing submissions, the Tribunal had a proper understanding of what this aim meant and how it was designed to be achieved within the architecture of the scheme rules (particularly Section 12 (2010 Compensation Terms) in the Rules of the Civil Service Compensation Scheme, commencing at [179] and then at [237] onwards).

298. The Tribunal also observes that one aim might not simply work in isolation from another aim and that the coherency of an aim can only be appreciated in the context of how it works with or supports another aim. Purported aim (2) is one such example, as is purported aim (3), with which the Tribunal deals next. The Tribunal accepts that this is a legitimate aim.

299. (3) In relation to the taper provisions specifically, avoiding a "cliff edge" effect at normal pension age, whereby compensation might be paid in full up to that age, and then reduced thereafter to the minimum compensation of 6 months' pay (for those with at least 6 years' service). Mr Mitchell submits (at paragraph 100 of his closing submissions) that the "cliff edge" is an artificial construct. The Tribunal accepts that that is what it is, but that does not mean that it is not potentially a legitimate aim. Viewed in isolation, the taper and the so-called "cliff edge" might raise questions as part of the Tribunal's scrutiny of the aims.

300. However, as Mr Tolley QC submitted, the aim is to avoid a situation where compensation might be paid in full up to normal pension date, and then reduced thereafter to the minimum compensation of 6 months' pay (subject to 6 years' service). Mr Tolley submitted that the Taper ensures that an employee does not receive "full" compensation up to normal pension age, followed by a steep drop to a minimum level at or after normal pension age. This is said to be about maintaining equity between employees as their age becomes more closely proximate to normal pension age. Mr Tolley addressed the consequences or removing the Taper, but not the Minimum Payment, and of removing both provisions. Either step would create second order issues (and this might be what any eventual reform of the schemes might achieve and overcome).

301. The Tribunal preferred the cogency of Mr Tolley's submissions on aim (3) to those of Mr Mitchell. The Tribunal accepts that this is a legitimate aim.

302. (4) Ensuring that all employees who are dismissed on the relevant grounds, and with at least 6 years' service, receive a substantial minimum amount of 6 months' pay or the equivalent amount to statutory redundancy pay (whichever is the greater). The Tribunal does not consider that it is necessary to search for the phrase "substantial minimum" in the key documents, or that phrases such as "the most generous terms" or more generous terms" or "generous benefit", which can be found in the documents (as Mr Mitchell's closing submissions at paragraphs 103-104 record), more accurately capture governments' commitments to civil servants. Even if the aim is more accurately one of providing "generous benefits" on termination, the Tribunal does not accept the distinction that Mr Mitchell seeks to make at paragraph 105 between termination via VE and termination via CR and VR. The schemes are to be viewed as whole, in the Tribunal's judgment, and are designed to provide compensation in circumstances of termination of employment, by whatever means (at least to the extent envisaged or contemplated by the schemes).

303. The Tribunal understands and appreciates that the claimants' case is essentially that they should receive payment of compensation without taper or cap, and that otherwise the schemes "offend the principle of generosity". However, in the Tribunal's judgment, ensuring that all employees who are dismissed on the relevant grounds, and with at least 6 years' service, receive a minimum amount of 6 months' pay or the equivalent amount to statutory redundancy pay (whichever is the greater) is both a genuine and legitimate aim.

304. (5) Allocating necessarily limited public funds in a fair and equitable manner amongst eligible employees. The claimants accept the need to allocate public funds in a fair manner, but they do not accept that discriminatory payments are fair. Their perception is that, although their dismissals were otherwise fair, the compensation that they received under the schemes was unfair. Whether the word "equitable" adds anything to the word "fair", the Tribunal doubts. However, despite noting the points that Mr Mitchell makes at paragraphs 108-114 of his closing submissions, the Tribunal's task in these proceedings is not to decide whether the claimants have been treated fairly, but to decide (in shorthand) whether they have been discriminated against unjustifiably because of their age.

305. Fairness is of course a proper test of whether this aim is genuine and legitimate. As Mr Mitchell notes at paragraphs 116 -117 of his closing submissions, the Cabinet Office seeks to amend the schemes so as to better promote fairness. Whether fairness would be achieved by removing the taper and the cap (minimum payment) is not for this Tribunal to determine.

306. In so far as the "limited public funds" is compared, Mr Mitchell makes the point (at paragraph 115 of his closing submissions) that the relative cost of the scheme to make provision for the comparators, set against the cost of providing equality in compensation to the claimants, is relevant. He submits that, given how much financial provision is made to support the younger workers, it is inappropriate to consider there is less of a need for compensation for the older workers, who receive comparatively, so much less. That may be so (without deciding whether it is), but it ignores the fact that an older worker is also likely to have had a longer working life and a longer opportunity of earning wages and building pension entitlement than a younger worker (but just as the younger worker has a better opportunity of obtaining re-employment than an older worker). This just serves to illustrate that seeking to allocate limited public funds in a fair and equitable manner amongst eligible employees is a genuine and legitimate aim, the Tribunal accepts, but one that involves balancing any number of competing factors.

307. (6) Appropriately taking into account length of service, while maintaining equity as between those close to normal retirement age and those at or beyond it, as well as between older and younger employees more generally. This is another aim whether the reference to "normal retirement age", when what is really meant is "normal pension age" is confusing. Mr Mitchell again questions the provenance of this aim (at paragraphs 118 and 120 of his closing submissions). The Tribunal does not consider that that is conclusive as to its genuineness or legitimacy.

308. The claimants' position, as expressed in paragraphs 121-122 of Mr Mitchell's closing submissions, is that length of service is a relevant variable to determine the amount of compensation to be paid to an individual under the compensation scheme. However, their position is that it is a variable that should not be discounted once an individual reaches an age or gains access to an earned benefit (that is, a pension). The effect of the taper and the cap is to reduce this accepted variable, resulting in the discrimination of older workers. Moreover, they say, it is inequitable to reduce the compensation paid to an individual for losing their job, bearing in mind the changing landscape and the need for older workers to continue working. To reduce the compensation to take into account the normal retirement age, particularly where that retirement age is 60, is out of step with the reality of the retirement age for the workforce, society and the aims of the Government.

309. That may be so (without deciding the point), but taking into account length of service, while maintaining equity as between those close to normal retirement age and those at or beyond it, as well as between older and younger employees more generally, is (in the Tribunal's judgment) a genuine and legitimate aim.

310. (7) Applying a clear and transparent set of rules in the interests of efficient administration. The Tribunal notes the brief submission on this aim made in Mr

Mitchell's closing submissions at paragraphs 123-124. Whatever the arguments may be as to whether the scheme rules are actually clear and transparent, or could be made so by removing the taper and/or the cap (minimum payment), the Tribunal does not hesitate to accept that this is both a genuine and legitimate aim.

311. Standing back from the "individual trees" in order to view the "wood" as whole, the Tribunal is satisfied that the seven aims advanced by the respondents in support of its defence of the compensation schemes are both genuine and legitimate, whether taken individually or collectively, particularly when viewed as a cohesive and coherent set of ends, aims or objectives. The Tribunal accepts that these are all legitimate aims; that each forms a social policy objective of a public interest nature; that none concern any purely individual reason particular to either the employer or the employee; and that there is no requirement that the aims should have been articulated, either in this way or at all, at the time that the measures were first adopted. To the extent that some aims might be regarded as primary aims and others as secondary aims, the secondary aims are relevant as informing the chosen means of implementation of the primary aims.

Proportionate means

312. If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim (Equality Act 2010 section 13(2)).

313. For the respondents, Mr Tolley QC restated his reliance upon paragraphs 58-68 of his opening submissions, which the Tribunal summarised earlier in its written reasons. He made the following further points.

314. First, it is clear from the evidence that the claimants do not contend for any other approach than the complete removal of the Taper and Minimum Payment provisions. It would mean that an employee with (say) 25 years' service and whose employment was terminated on grounds of voluntary redundancy would receive the same amount of CSCS compensation regardless of age. The same would be payable to someone aged 55 as to someone aged 60, 65 or 70. Such an approach would involve a failure to take account of an obviously material factor, which is the extent at different ages of the lost opportunity to continue earning from Civil Service employment, which is self-evidently greater where the individual has a longer future period of working life expectancy. Indeed, it is not difficult to see how such an approach could lead to age discrimination claims from younger employees, who might well say that it is not justifiable to pay them the same amount by way of compensation for redundancy as an older employee, who has already received more years of earnings and who would, if above normal pension age, be entitled to immediate and full payment of their pension (including any lump sum). An unsustainable cycle of "upwards-ratcheting" of payments could then ensue. Moreover, even if a younger employee can be said to have better prospects of alternative employment than an older one, the consequences for such a person of not obtaining such employment are commensurately more serious – because they have had fewer years of earning in the first place. Such comparisons are in any event not sensibly capable of being made in relation to narrow age differences (such as between a person aged 58 and another aged 59).

315. Secondly, the substantive link between the CSCS and the PCSPS is not a matter of mere happenstance, but it is an essential part of the design of these schemes. What is merely adventitious is that the two schemes are now contained in separate documents. As Sales J commented in *PCS (No. 1)*, the "integration of compensation rights and pension rights" has been a consistent feature throughout the operation of the schemes and continues to be so. The concept of "Pension Age" (defined by reference to the applicable section of the PCSPS) is at the heart of the operative provisions of the CSCS with regard to redundancy compensation: Rules 12.1.5, 12.1.7 and 12.1.9. These Rules, by reason of the definitions they contain, are built into the provisions which determine the amount of compensation to be paid: Rules 12.4.3 and 12.5.2. The claimants' case would involve the severance of that integration, without any basis in principle. The structure of both schemes is to enable an employee made voluntarily redundant on and after age 50 (or 10 years from normal pension age) to receive at his or her election a full and unreduced payment of pension. The cost to the employer of that benefit is higher for a younger employee, but the ultimate aim is to put each employee in the same position. An older employee, closer to but not yet at normal pension age, can use part of the CSCS compensation payment to fund the ARBO cost, and may well be left with a surplus (see the arithmetically worked examples referred to in Mr Spain's evidence. It involves the equal treatment of difference, which is much more consistent with equality principles than the same treatment for all regardless of difference. If one were to remove the link between the CSCS and the PCSPS, it would follow that there would no longer be any justification for employer funded top-up at any age. The fact that the employee would (or would not) receive 'X' by way of PCSPS benefits would then not be relevant to the amount of their compensation payment under the CSCS. The claimants' case does not involve any recognition of this point. The PCS witnesses (Mr Lewtas and Mr O'Connor) in their evidence sought to maintain both the removal of the link between the PCSPS and the CSCS and the maintenance of employer funded top-up. None of the individual claimants sought to suggest that they would wish to see the removal of employer funded top-up for younger employees. The attempt to maintain these contradictory propositions lacks any principled foundation. It involves a demand for 'more' without reference to any coherent logic.

316. Thirdly, the analysis set out at Annex 1 to Mr Spain's witness statement and further explained by him in his statement shows clearly that the effect of the Taper is to reduce the range of payments in proportionate terms made to employees who depart on grounds of redundancy. The gap between the potential loss and the value of the benefits provided is relatively consistent when considered in terms of the percentage of compensation to potential loss. If, however, there were no Taper, the result would be disproportionately greater compensation available to employees whose employment was terminated close to, at or above normal pension age. Indeed, in some cases, the overall package would be worth more than their likely potential loss had they continued in employment for the period of their working life expectancy. Such an outcome would self-evidently be even more marked if there were no separate limit on compensation payable to those at or above normal pension age. On the premise of an employee with 21 years' service (or more), the amount of their CSCS payment would increase by 15 months' pay (from 6 months' pay to 21 months' pay). This part of Mr Spain's evidence was

effectively unchallenged. It is no answer to the substance of this evidence to complain of unfairness (even if that complaint were well-founded, which it is not), and then hope that the Tribunal might thereby ignore what is undoubtedly relevant material.

317. Fourthly, the benefits available under the CSCS are entirely non-contributory. They are additional (or potentially additional) to those available under the PCSPS, which are only in small part contributory. As the analysis set out at paragraphs 25-30 of Mr Tolley's closing submissions shows, the claimants made contributions amounting to only a small proportion of the value of their PCSPS benefits. The circumstances of the sample claimants are likely to be typical. In light of this disparity, it may be that the true level of generosity of the benefits available under the PCSPS is not properly appreciated. In those circumstances, to leave out of account the value of the PCSPS benefits when determining CSCS compensation would be artificially to ignore a highly material feature of the terms of departure for redundant employees.

318. Fifthly, there is no dispute that the internal operation of the Taper is proportionate, reducing the amount of CSCS compensation on a month-by-month basis commensurate with proximity to normal pension age. The claimants do not suggest that any form of individualised decision ought to be made, by way of an attempt to discern as a matter of fact the likely duration of the employee's working life expectancy or his prospects of obtaining alternative employment.

319. Sixthly, in view of the structure of the CSCS and PCSPS taken together, there would be a case for making no compensatory payment to a person made redundant on or after reaching normal pension age. However, such an approach would produce an outcome whereby a civil servant was worse off than a non-Crown employee, who would be entitled to a statutory redundancy payment. It has previously been held by an employment tribunal to involve unlawful age discrimination, leading to the introduction of the Minimum Payment provision (*Wallis v The Cabinet Office,* Case No 2201982/2007, 16 July 2008). Certain of the December 2010 changes to the CSCS, ultimately upheld by the High Court, were designed to respond to this decision. As a result, every civil servant dismissed as redundant after reaching normal pension age receives a substantial sum by way of compensation, of at least 6 months' pay (and if the amount of statutory redundancy would have been higher, then that higher amount). In this context, the civil servant is thereby no worse off than a person, in non-Crown employment, entitled to a statutory redundancy payment. Indeed, taken overall, it is likely (probably to a high degree) that he will be better off because of the entitlement to benefits under the PCSPS which will in almost all cases be superior to the benefits available under a defined contribution scheme (assuming similar salary) or any defined benefit scheme outside the public sector.

320. Seventhly, the potential additional cost of removing the Minimum Payment provision and so paying every redundant employee a compensation payment of up to 21 months' pay, instead of 6 months' pay, is self-evident. On the basis of the figures shown at paragraph 39 of Mr O'Connor's witness statement, there are 34,500 Civil Service employees in the 60 to 64 and over 65 age brackets, with a further 133,300 in the 50 to 56 and 55 to 59 age brackets. There would also be

potentially substantial cost involved in removing the Taper, in that it could apply to the 58,700 employees in the 55 to 59 age bracket and in due course to the further 74,600 employees in the 50 to 54 age bracket. However, as Mr Spain observed in his evidence, the Taper should be retained even if its removal would not substantially increase the cost of operating the CSCS. Its role is not principally to reduce cost, but rather to achieve fairness in relation to payments made to those approaching normal pension age by comparison with both those with further to go until reaching normal pension age and those who have already reached normal pension age. The retention of the Minimum Payment provision while removing the Taper would give rise to the 'cliff-edge' problem which the Taper is in part designed to avoid.

321. Eighthly, the PCS witnesses (Mr Lewtas and Mr O'Connor) sought to attack the respondents' case on justification on the basis of matters which were either irrelevant or inaccurate. In particular: (1) It was said that workers are now expected to work longer. But this was not the case in relation to the claimants, or anyone similarly placed – unless the point being made was a reference to the increase in state pension age. (2) The occupational pension age (normal pension age) of the claimants (or anyone in the same position) was not affected at any time. (3) The accrual rate for the claimants (or anyone else in their position) was not affected at any time. It remained 1/80th for members of the Classic scheme and 1/60th for members of the Premium scheme. (4) Age discrimination legislation was introduced in 2006 – the Employment Equality (Age) Regulations (2006/1031) came into effect on 1 October 2006. The material provisions of the CSCS came into effect subsequently in December 2010. (5) The assertion that the cost of the tapering arrangements was "insignificant" was founded on an arithmetical error about the number of civil servants in the relevant age brackets (see paragraph 39 of Mr O'Connor's witness statement). The only point that was made which had the slightest validity was the observation that the state pension age has been increased (to 66, and for those born on or after April 1960, to 67). However, this is a change which affects all members of society equally. It cannot sensibly mean that the amount of CSCS compensation should be increased in order to compensate for a higher state pension age.

322. Mr Tolley acknowledged that the Tribunal is entitled, indeed required, to subject the respondents' case of justification to careful scrutiny. However, it is submitted that this is a clear case in which the respondents have met the necessary standard. It is submitted that the measures in question correspond to an obvious and real need, are appropriate and reasonably necessary in achieving the objectives pursued, and those needs outweigh the discriminatory effects. Indeed, the extent of age discriminatory effects would likely be greater if one removed the Taper and Minimum Payment provisions, albeit in favour of older employees, because in those circumstances older employees – close to, at or above normal pension age - would receive a significantly higher proportionate amount of compensation by comparison with their potential loss.

323. In his written closing submissions on behalf of the claimants, Mr Mitchell understood there to be six issues of proportionality relied upon and in issue.

324. First, that compensation paid to employees leaving on CR/VR/VE is a generous discretionary benefit. Mr Mitchell submitted that a generous scheme should not discriminate between younger and older workers.

325. Secondly, bridging the financial gap between the termination of their employment and their obtaining any subsequent employment income, or receiving their full pension (including any entitlement to a lump sum pension payment) at normal pension age. It is submitted that it is not proportionate to have one side of the bridge set at a date when individuals can neither retire and where their prospects of obtaining subsequent income are less than their comparators. The lump sum received and the pension remain benefits that the recipients have "earned". Those earned benefits should not be taken into account to artificially reduce the compensation that should be paid under a fair scheme which recognises the impact on an older worker in losing their job is no less than that of a younger worker. Indeed, it is said, it is accepted by the Government that in fact older workers have more difficulty in obtaining alternative work. It is not proportionate to perpetuate a scheme which discriminates against older workers in this manner

326. Thirdly, the provisions allocate necessarily limited funds in a fair and equitable manner amongst eligible employees, taking into account that the CSCS is (a) publicly funded and (b) non-contributory. The submission is that it is irrelevant that the scheme is publicly funded/non-contributory. Access to a pension is earned. Access to a compensation scheme, any compensation, should be fair. It is unfair to pay older employees less, on the grounds of their age. To pay older workers less, when all are given access to a pension scheme, but the access granted to the younger individuals comes by way of a significant cost to the employer, establishes both the generosity of the scheme which should be fairly and similarly provided by way of an uncapped and untampered payment of compensation to the older workers, personified by the test claimants.

327. Fourthly, recognition that employees who are already at (or beyond) or close to normal pension age as at the date of termination typically have more limited opportunity to continue to receive earnings than a person below normal pension age. The older the person, the lesser is their potential to obtain alternative work. The impact, as the Tribunal has heard from the claimants, supports the position that there is more reason to pay uncapped/tapered compensation to those close to, at or above 60. The Tribunal has tangible evidence, together with the acknowledgement from Government/Cabinet Office statements, that older people find it more difficult to obtain alternative work. To provide compensation, it must adequately cover the loss sustained. The losses flowing from their redundancy are more fairly compensated by the removal of the taper/cap.

328. Fifthly, equity/windfall arguments – if someone received full compensation and pension/lump sum, they would be in a better position (in one sense). It is noted that the respondents have not asserted any windfall arguments themselves. Nevertheless, any assertion of an equitable distribution implies a windfall element. Such arguments ignore the fact that the pension is "earned" and part of the deferred pay. The older the individual, the closer they are only to realise that earned pension. The younger the individual, the greater their opportunity to

continue to obtain alternative employment, receive an income, while still in receipt of their unreduced pension. In direct contrast, those above 58 and 9 months receive less, when their need is greater because of their inequitable position in the employment market. Mr Mitchell dismissed any proposition, however constructed, that older workers are in a better position.

329. Sixthly, cost considerations/affordability. Cost alone cannot be a legitimate aim. The Tribunal should be live to any attempt to disguise a cost alone aim within other aims that perhaps have no provenance at all, but in any event have in their essence a cost element. The respondents have not specifically calculated the cost consequences of removing the taper/cap, and its interrelationship to the precise cost of the total benefits paid to younger members provided access to an unreduced pension. Given the numbers of, for example CR in 2021, it is a very small cost against the price of preventing age discrimination. It is a small cost to place fairness into the system of compensation.

330. Mr Mitchell noted that he had become aware that at least one non-sample claimant worked for the Gambling Commission. He submitted that this point should be noted now as it may be that any compensation provided within that scheme is funded by the licence fees derived from the gambling industry and not the public purse. It may be the reach of this specific aim may need to be considered further.

331. Nevertheless, the claimants assert the greater the discriminatory impact, the greater the weight required to justify an aim perpetuating that direct discrimination. The claimants do not accept that the respondents have shifted the great burden placed upon them, when considering the substantial and continuing financial disadvantage caused to the test claimants.

332. In conclusion, Mr Mitchell submitted, considering the discriminatory effect that those close to, at or over 60 suffer given the “double whammy” of the taper and or cap being applied to them, in the clear context that they suffer reduced opportunities to seek alternative employment, both wholly and undeniably because of their age, the weight of this impact is not outweighed by any aim pursued by the respondents. The respondents are seeking to sustain and maintain aims that by their own admission are not achieving their objectives; they have repeatedly sought to change the scheme; and particularly given the different employment landscape, the respondents have failed to shift the burden upon them with the balance falling in favour of the removal of both the cap and the taper and the end to the age discrimination suffered by the claimants.

333. The Tribunal expresses its gratitude again to both counsel for the quality of the oral and written submissions that have been presented to it, both in opening their respective case and in closing them.

334. In addressing the question of “proportionate means”, the Tribunal has reminded itself that the means chosen to achieve the aim must be both appropriate and reasonably necessary. The means should be carefully scrutinised in the context of the business concerned to see whether they do meet the objective and that there are no other, less discriminatory, measures which would do so. Where it is justified to have a general rule, then the existence of that rule will usually justify the

treatment which results from it. As *Seldon* establishes, the government as an employer must be accorded some margin of discretion in relation to both aims and means, although it is for the Tribunal to determine what the appropriate margin is.

335. Borrowing from Mr Tolley's opening submissions, the case law indicates that the use of age as a factor in decision-making is not intrinsically demeaning, although it requires rational justification. The key question is whether the discriminatory scheme is a proportionate means of achieving a legitimate aim. The burden of proof is on the respondent to establish justification. The measures adopted must correspond to a real need, be appropriate with a view to achieving the objectives pursued and reasonably necessary to that end. An objective balance should be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification. It is for the tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the measure and make its own assessment as to whether the former outweigh the latter. In general, tapering provisions may be very readily justified, as necessary to ensure equity between those close to retirement and those in retirement receiving pensions. However, the question whether justification is in fact made out will depend on the nature of the schemes in question. It is relevant to take into account any agreement with trade unions, as well as the fact of the timing at which the employee is entitled to take his pension. There is a need for critical appraisal by the Tribunal to ensure that no "traditional assumptions" relating to age have influenced the employer. There is a potential justification on the basis that employees who lose out under the terms of one scheme because of an age-related provision are sufficiently compensated by reference to their pension entitlement. In considering whether any particular aspect of the scheme is justifiable, it is necessary for the Tribunal to focus on the scheme (or schemes) in question as a whole, in order to decide whether it was a proportionate way of achieving a number of different (but all legitimate) aims, some of which may be in tension.

336. Taking all these matters into consideration, the Tribunal is satisfied that the respondents have discharged the burden upon it of showing that its treatment of the sample claimants is a proportionate means of achieving a legitimate aim (Equality Act 2010 section 13(2)). The Tribunal has accepted the respondent's evidence in support of the specific burden upon it, while acknowledging and broadly accepting the evidence of the sample claimants and of the PCS trade union witnesses. However, in the final analysis the submissions made by Mr Tolley QC on behalf of the respondents in respect of legitimate aims and proportionate means are persuasive and compelling. The claimants' case is essentially one built upon a perception of unfairness in circumstances where any integrated scheme designed to compensate for loss of employment while also providing immediate or anticipated access to pension benefits must draw a line at some point by reference to length of service and/or to age. The CPCS, although not a perfect scheme by any means, and being also a scheme that also needs updating and reform, draws that line appropriately and with due regard for safeguarding the position of employees who fall marginally either side of the line.

337. For the reasons advanced by Mr Tolley for the respondents, the CSCS is an age discriminatory scheme, but is a proportionate means of achieving a legitimate

aim. The respondents have established justification. The measures adopted within the CSCS correspond to a real need, are appropriate with a view to achieving the objectives pursued and are reasonably necessary to that end. The scheme strikes an objective balance between the discriminatory effect of its measures and the needs of the Civil Service. Where the claimants have established disparate adverse impact, the respondents have established a cogent justification to the required degree. Weighing the reasonable needs of the Civil Service against the discriminatory effect of the scheme, the Tribunal's assessment is that the former outweighs the latter. The Tribunal is also satisfied that no "traditional assumptions" relating to age have influenced the respondent. In coming to that conclusion, the Tribunal has focused on the schemes as a whole and as of a piece.

Public sector equality duty

338. Mr Mitchell for the claimants raised in his written opening submissions the question of whether the respondents had engaged with their public sector equality duty under section 149 of the Equality Act 2010 and whether they had discharged their obligations under that duty. See above. He did not rely upon section 149 or the public sector equality duty in his oral or written closing submissions

339. As Mr Tolley QC noted, the argument appears to be to the effect that, if the public sector equality duty is not complied with, an aim incompatible with that duty cannot be proportionate. This appears to be a reframing of the unsuccessful argument raised at first instance in *Coombes*.

340. The Tribunal agrees with Mr Tolley's submission that no case based on section 149 has been pleaded and it did not feature in the agreed list of issues. The point has been raised for the first time in these proceedings in Mr Mitchell's opening submissions. The alleged breaches of the duty have not been made clear.

341. Section 149 came into force on 5 April 2011. It did not apply at the time of the December 2010 iteration of the CSCS. In any event, under section 156, a failure in respect of performance of the public sector equality duty does not confer a cause of action at private law (albeit that it might provide grounds for judicial review in the High Court). The duty is also not one to achieve any particular result. Rather, it is a duty to have due regard to the need to achieve equality. In this context, "due" means such regards as is appropriate in all the circumstances: *Luton Community Housing Ltd v Durdana* [2020] EWCA Civ 445, [2020] HLR 27 [17]-[18] and the cases there cited. As the EAT pointed out when rejecting the appeal in *Coombes* on the sift, where it is highly likely that the decision in question would not have been substantially different if the duty had been complied with, non-compliance with the duty will make no difference to the outcome of a private law claim. See *Aldwyck Housing Group Ltd v Forward* [2019] EWCA Civ 1334, [2020] 1 WLR 584, [21] and [25].

342. It is not clear if and to the extent that the claimants seek to argue the contrary, but the Tribunal accepts the respondents' invitation to conclude that due regard has been given to the duty in relation to the operation of the Taper and Minimum Payment provisions. Even if not before, such regard has been carefully paid in the course of the preparation of the respondents' evidence in these proceedings, in

which the analysis addressed by Mr Spain in his statement clearly indicates the effect of having and not having the Taper, with the former being substantially more consistent with equality in relation to age than the latter. It is probable that the same will be true in relation to the Minimum Payment provision. It may also be noted that in the 2017 judicial review challenge to the then proposed reforms to the CSCS, one of the grounds of challenge was based on alleged non-compliance with the public sector equality duty in relation to disability (but, notably, not age). The High Court was satisfied that the Minister had complied with section 149: [2018] ICR 269, [83]-[87].

Two additional points

343. The reasons above represent the unanimous reasoning of the Tribunal. One of the non-legal members also made the following two additional points.

344. (1) If any of the sample claimants had an opportunity to elect to transfer from an "old" scheme to a "new" scheme, they would have been subject to increased contributions and a later normal pension age of 65. It is likely that younger workers would have not had such a choice of scheme. The sample claimants thus have an advantage or benefit as a result of their age. If they had elected to transfer to a "new" scheme any reduction or tapering in compensation would not have taken effect until, perhaps, the age of 63.5 years.

345. (2) The decision in *Loxley* examined whether the claimant's exclusion from redundancy compensation was proportional or proportionate to his loss. The older the worker, the more they will have worked for additional years compared with a younger worker. The younger worker potentially suffers a greater loss compared with the older worker.

Conclusion and disposal

346. In its unanimous reserved judgment, the Tribunal concludes that the respondent has established its defence to the sample claims.

347. By reference to the sample cases, the respondents conceded that in their application of the Civil Service Compensation Scheme to the sample claimants, and because of the protected characteristic of age, they treated those sample claimants less favourably than the respondents treated or would treat others, within the meaning of section 13(1) of the Equality Act 2010. However, applying section 13(2) of the Act, the protected characteristic being age, the respondents did not discriminate against those sample claimants for the purposes of section 39(2) of the Act because the respondents have shown that their treatment of those sample claimants was a proportionate means of achieving a legitimate aim.

348. The Tribunal will refer the judgment to the Regional Employment Judges at Manchester and at Bristol, and to the President, so that they might determine how to proceed further in the light of the President's previous case management order and the management of this wider multiple of cases by the two Regional Employment Judges concerned.

349. The parties have liberty to apply in the usual way, particularly as to the form of any declaration or order that should result from this judgment.

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Judge Brian Doyle
Date: 14 January 2022

Reserved Judgment and Reasons
Sent to the parties on:
18 January 2022
…….
For the Tribunal Office:

……..……..

	Multiple Schedule
Case Number	**Case Names**
1300370/2020	Mr Malcolm Bromfield -v- HM Revenue & Customs
1302305/2020	Mr Richard Ian Williams -v- Qualifications and Curriculum Development Agency
1304879/2020	Mr Martyn Wait -v- HM Revenue & Customs
1306665/2020	Mrs Margaret Evans -v- HMRC
1307059/2020	Mrs Jill Taft -v- H M Revenue and Customs
1311090/2020	Mrs Gail Jenkins -v- Hm Revenue and Customs
1400573/2020	Mr Gareth Dyer -v- H M Revenue and Customs
1400588/2020	Mrs Cynthia Cain -v- Department of Work And Pensions
1403449/2020	Mrs Susan Ogburn -v- HM Revenue & Customs
1801498/2020	Miss Margaret Maw -v- HM Revenue & Customs
2301875/2020	Mrs Kathryn Kennedy -v- HM Revenue and Customs
2307936/2020	Mr Keith Rourke -v- H.M Revenue & Customs
2400627/2020	Ms Mary Newby -v- Her Majesty's Revenue and Customs
2400668/2020	Mrs Elizabeth Harris -v- H M R C
2400673/2020	Mrs Irene Wenham -v- HMRC
2401243/2020	Mr Colin McGhee -v- H M Revenue & Customs
2402611/2020	Mrs Ann Carr -v- Civil Service
2413462/2020	Mrs Ann Price -v- HM Revenue and Customs
2413906/2020	Mrs Heather Smith -v- HMRC
2415261/2020	Mrs Adina Clarkson -v- H M Revenue & Customs
3213352/2020	Mr Brian O'Donnell -v- Department for Work And Pensions
3302342/2020	Mrs Sumitra Gorecha -v- The Commissioners for Her Majesty's Revenue and Customs
3307845/2020	Miss Elizabeth Robb -v- HMRC
4101312/2020	Mr Ian Linton -v- HMRC
4101833/2020	Mr David Wilson -v- H M Revenue & Customs
4102235/2020	Mrs Pauline Scott -v- The Commissioners for Her Majesty's Revenue And Customs
1304485/2021	Mrs Jayne Long -v- HM Revenue & Customs
1304798/2021	Mrs Marion Parkes -v- HM Revenue and Customs, HR shared Services
1600718/2021	Mrs Sharn Hagerty -v- HM Revenue & Customs
1804155/2021	Mrs Helen Allen -v- HM Revenue & Customs
2203493/2021	Mr Collin Richards -v- National Audit Office
2400083/2021	Mr Ian MacDonald -v- HM Revenue and Customs

	Multiple Schedule
Case Number	**Case Name**
1305572/2019	Mrs Gail Bates -v- Kuehne & Nagel Limited
1305573/2019	Mr David Brewer -v- Kuehne & Nagel Limited
1305574/2019	Mrs Heather Wright -v- Kuehne & Nagel Limited
1305575/2019	Miss Irene Gaut -v- Kuehne & Nagel Limited
1305576/2019	Mrs Jane Smith -v- Kuehne & Nagel Limited
1305577/2019	Mr William Gregg -v- Kuehne & Nagel Limited
1305578/2019	Miss Cheralyn Blinkhorne -v- Kuehne & Nagel Limited
1306051/2019	Mr Anthony Nixon -v- Kuehne + Nagel
1300304/2020	Mrs Lorna Shuttleworth -v- H M R C
1300353/2020	Mrs Josephine Bridgwood -v- HM Revenue and Customs
1300375/2020	Mrs Judith Hackney -v- H M R C
1300385/2020	Mrs Lesley Thomas -v- H M Revenue & Customs
1300415/2020	Miss Mary Boyle -v- H M R C
1300416/2020	Mrs Victoria Brindley -v- HM Revenue And Customs
1300439/2020	Mrs Christine Bourne -v- Hm Revenue & Customs
1300469/2020	Mr David Johnson -v- HM Revenue & Customs
1300474/2020	Mrs Celia Cadman -v- H M R C
1300479/2020	Mrs Hazel Slater -v- H M R C
1302303/2020	Miss Beverly Plant -v- HM Revenue & Customs
1302327/2020	Mrs Eileen Harvey -v- Hmrc
1304129/2020	Mrs Catherine Mee -v- HM Revenue & Customs
1304134/2020	Mrs Margaret Thompson -v- HM Revenue & Customs
1304142/2020	Mrs Catherine Shaw -v- H M R C
1304321/2020	Mr Nigel Finlinson -v- H M Revenue & Customs
1304908/2020	Mrs Cheryl Silvana Bench -v- Ministry Of Justices - Shared Services
1304909/2020	Mr Neil Brownsword -v- Commisioners for Her Majesty's Revenue and Customs
1305181/2020	Mr Mark Stephenson -v- Hm Revenue And Customs
1305204/2020	Mrs Colette McQuade -v- Hmrc
1305217/2020	Mrs Sandra Barlow -v- The Commisioners for Her Majesty's Revenue & Customs
1306373/2020	Mrs Valerie Price -v- Department For Work And Pensions
1311089/2020	Mr Ian Hough -v- Hm Revenue And Customs
1311109/2020	Mr Peter Mark Walker -v- Valuation Office Agency Hmrc
1311232/2020	Miss Susan Sargent -v- Hm Revenue And Customs
1311235/2020	Mr James Sweeney -v- Hm Revenue & Customs
1311283/2020	Mr Eugene Finn -v- Valuation Office Agency
1311328/2020	Mrs Karen June Jobson -v- H M Revenue And Customs
1311345/2020	Mr Dale Allen -v- Gambling Commission
1311388/2020	Mrs Lesley Miller -v- Hm Revenue & Customs

1400490/2020	Mr John Webster -v- HMRC
1400577/2020	Mr Ian Charles Harris -v- Hm Revenue And Customs (HRSS)
1400617/2020	Ms Corinne Perks -v- Ministry Of Justice
1400634/2020	Mr Michael Acland -v- Department For Work And Pensions
1400646/2020	Mr Ronald May -v- Office For National Statistics
1400669/2020	Mrs Julie Taylor -v- HM Revenue & Customs
1400830/2020	Mr Mike Paskins -v- HMRC
1401305/2020	Mrs Helga Eley -v- Department Of Work And Pensions
1401785/2020	Mr John Bingham -v- Defence Equipment & Support Secretariat
1404602/2020	Mrs Linda Andrews -v- Hmrc
1404645/2020	Mr Victor Michael Lee -v- Hm Revenue & Customs
1404669/2020	Mrs Helena Walker -v- Hm Revenue & Customs
1404699/2020	Mrs Gillian Ralphine Thompson -v- Hm Revenue & Customs
1404730/2020	Mr John Butler -v- Nuclear Decommissioning Authority
1404741/2020	Mrs Karen Lee -v- H M Revenue & Customs
1405257/2020	Mr Simon Denison -v- Hm Revenue & Customs
1406181/2020	Mrs Beverley Pearce -v- Hm Revenue & Customs
1406692/2020	Mr Alastair Henry -v- Gambling Commission
1600492/2020	Mrs Mary Rees -v- The Welsh Ministers
1600574/2020	Mrs Elizabeth Jenkins -v- The Welsh Ministers
1600589/2020	Ms Lilian Mary Jones -v- The Welsh Ministers
1600595/2020	Mr Keith Roberts -v- H M Coastguard
1600881/2020	Mrs Mary Nicholls -v- The Welsh Ministers
1600897/2020	Mrs Shirley Hoey -v- Department For Work And Pensions
1602741/2020	Ms Karen Hughes -v- Hm Revenue And Customs
1800628/2020	Mrs Glenys Mary Day -v- Crown Prosecution Service
1800631/2020	Mr Gary Flakes -v- Her Majesty's Revenue & Customs
1800894/2020	Mr Jeremy Bird -v- Department Of Health
1800905/2020	Mrs Gillian Robb -v- Hmrc
1801016/2020	Mrs Wendy Crombie -v- H M R C
1801479/2020	Mr Dale Hurton -v- H M Revenue & Customs
1802044/2020	Mr Ian Dalziel -v- Department For Work And Pensions
1806035/2020	Mrs Kathleen Stabler -v- H M R C
1806647/2020	Mrs Shirley Cadman -v- Hm Revenue & Customs
2200335/2020	Mr Anthony Collins -v- Department For Environmemt, Food And Rural Affairs
2200340/2020	Mrs Catherine Mary Newton -v- Skills Funding Agency
2200390/2020	Mrs Geraldine MacKay -v- HM Revenue & Customers
2200411/2020	Mr John Rodwell -v- Civil Service Learning (Cabinet Office)
2200467/2020	Ms Sylvia Hemsley -v- HMRC
2201029/2020	Mr Lynn Raw -v- Dept For Environment, Food And Rural Affairs
2201471/2020	Mr Trevor Okill -v- Ministry Of Justice/Secretary Of State For Justice

2201484/2020	Mr Nibras Al-Salman -v- Home Office
2204850/2020	Mr K Baffour -v- British Museum
2204923/2020	Ms Ruth Müller-Wirth -v- National Portrait Gallery
2300432/2020	Mr Christopher Townsend -v- Department For Work And Pensions
2300502/2020	Miss Helen Paula Smithe -v- Hm Revenue And Customs
2300558/2020	Mrs Josephine Troy -v- Department For Work And Pensions (dwp)
2300858/2020	Mr Christopher Kelly -v- Home Office (hr Dept)
2301314/2020	Mr Nigel Hasseldine -v- Hmrc
2301323/2020	Mrs Margaret Sutton -v- Department For Work & Pensions
2301341/2020	Mr Terence Michael Carter -v- Hm Revenue & Customs
2301501/2020	Mr Nawalage Wellington Shant Perera -v- Department For Work And Pensions
2302215/2020	Mr Paul Litobarski -v- Home Office
2302507/2020	Mr Kassim Jah -v- Home Office Hr
2400709/2020	Mr David Large -v- Ronald Griffiths HM Inspector of Health And Safety, HSE
2400722/2020	Mr Paul Dolan -v- Department For Work & Pensions Jobcentre Plus
2400750/2020	Mr Ian Gallagher -v- Department For Work And Pensions
2400752/2020	Ms Brenda Heaton -v- Department Of Work & Pensions
2400912/2020	Mr David Whittle -v- Department For Work And Pensions
2401170/2020	Mr Stephen Jennings -v- Acas
2403149/2020	Mrs Sharon Gee -v- H M Revenue And Customs
2403305/2020	Mrs Janet Taylor -v- HM Revenue & Customs
2408068/2020	Mr John Crawford -v- Education & Skills Funding Agency Previously Skills Funding Agency & Others
2408111/2020	Mr Andrew John Moore -v- H M R C
2500303/2020	Mrs Sandra Young -v- Deparment for Work and Pensions Sheffield ESC
2500329/2020	Mrs Gillian Clark -v- DWP Employee Services
2501590/2020	Mrs Lorraine Low -v- Department of Work and Pensions
2502099/2020	Mr Ian MacDonald -v- Hm Revenue & Customs
2502108/2020	Mrs Ann Ferguson -v- HMRC
2502286/2020	Mr Paul Conlon -v- H M Revenue & Customs
2502328/2020	Mrs Susan Dawn O'Donoghue -v- Hmrc
2502343/2020	Mrs Vivienne McCluskey -v- H M Revenue & Customs H R Operations
2502357/2020	Mr John MacLeod -v- H M Revenue & Customs, Chief People Officer Group People, Policy And Programmes
2502359/2020	Mr Graham Slade -v- Hm Revenue & Customs
2600338/2020	Mrs Janet Young -v- HM Revenue and Customs
2600348/2020	Mr Kevin Styles -v- Secretary Of State For Justice
2600618/2020	Mrs Yvonne McConnell -v- Department for Work and Pensions
2600628/2020	Mr James Tempest -v- Department For Work And Pensions
2600851/2020	Mr Philip Newnham -v- The Department For Work And

	Pensions
2601980/2020	Ms Penelope Jane Spencer Matthews -v- Ministry Of Justice & Others
2603598/2020	Mr Peter Hopkins -v- Hmrc
2603789/2020	Mr Timothy John Taylor -v- Hm Revenue And Customs
2604383/2020	Mr Ian Stewart Mackie -v- HMRC
3301946/2020	Ms Gail Cullen -v- Education And Skills Funding Agency
3301979/2020	Mr Edward Stephen Andrews -v- Commissioners for HM Revenue and Customs
3301988/2020	Mrs Juliet Postbeschild -v- Hm Revenue & Cusstoms
3302209/2020	Mr Roger Lawrence -v- Department Of Work For Pensions
3302728/2020	Mrs Samita Petladwala -v- Commissioners for Her Majesty's Revenue And Customs
3302839/2020	Mrs Jane Keown -v- Hmrc
3302852/2020	Mrs Fei Ni Toole -v- Department For Business Energy And Industrial Strategy
3303103/2020	Mrs Susan Taylor -v- HM Revenue & Customs
3303199/2020	Mr Duncan Brown -v- Department For Work And Pensions
3306080/2020	Mr Mark Cawdery -v- Her Majesty's Revenue And Customs
3306105/2020	Mrs Shirley Wagg -v- Hm Revenue & Customs (hrss)
3311696/2020	Ms Heather Court -v- Althea Healthcare Properties Limited
3313971/2020	Mrs Julie Haytack -v- Her Majesty's Revenue And Customs
3314676/2020	Mrs Tina Sereno -v- Commissioner for Her Majesty's Revenue And Customs
3314705/2020	Mr Graham Mann -v- HM Revenue & Customs
3314730/2020	Mrs Lorayne Keet-Marsh -v- Hm Revenue & Customs
3314747/2020	Mr Paul West -v- Hm Revenue & Customs, Hr Shared Services
3315212/2020	Mr David Werin -v- H M Revenue & Customs
4100176/2020	Mrs Margaret Records -v- Hm Revenue & Customs
4100560/2020	Mr Stephen Atkins -v- Forestry Commission
4101265/2020	Mrs Eleanor Davidson -v- The Commissioners for Her Majesty's Revenue And Customs
4101456/2020	Mrs Anne Perry -v- The Commissioners For Her Majesty's Revenue and Customs
4101995/2020	Ms Sandra Bryce -v- Hmrc
4102191/2020	Mrs Andriene Milne -v- The Commissioners For Her Majesty's Revenue And Customs
4102246/2020	Mr Angus Cook -v- The Commissioners For Her Majesty's Revenue And Customs
4102338/2020	Mr Michael Connor -v- The Commissioners For Her Majesty's Revenue And Customs
4102712/2020	Mr Philip Jackson -v- Hm Revenue And Customs
4102760/2020	Mr Ralph Wilson -v- Hmrc
4103298/2020	Mr Steven White -v- Hmrc
4103594/2020	Mr Steven White -v- H M Revenue And Customs
4104836/2020	Mrs Diane Reid -v- Hm Revenue And Customs
4104916/2020	Ms Williamina Flanagan -v- H M Revenue And Customs

4105003/2020	Mrs Marian Joan Young -v- Hmrc
4107120/2020	Mr Rory O'Doherty -v- Hm Revenue & Customs
4108021/2020	Mrs Barbara Fitzpatrick -v- Hm Revenue & Customs
1300058/2021	Mrs Angela Emerson -v- Hmrc
1300076/2021	Mr Roy Wiltshire -v- H M Revenue And Customs
1300121/2021	Mr Melvyn Potter -v- Gambling Commission
1300126/2021	Mr Damian Chapman -v- Gambling Commission & Others
1300160/2021	Mr David Henman -v- Hm Revenue & Customs (hr)
1300759/2021	Mrs Adele Cooke -v- Valuation Office Agency
1300805/2021	Mr Steven Brown -v- HM Revenue & Customs
1300873/2021	Mr Ivan Davies -v- Valuation Office Agency
1300914/2021	Mrs Barbara Turner -v- Hmrc
1300917/2021	Mrs Christine Bache -v- Hm Revenue & Customs Hr Service Centre
1301035/2021	Mr Gary Taberer -v- Hm Revenue & Customs
1304981/2021	Mrs Jayne Woodhead -v- HMRC
1305005/2021	Mr Keith Lloyd -v- HM Revenue & Customs
1400363/2021	Mrs Carole Saunders -v- Hmrc
1400725/2021	Mrs Melanie Natella -v- Hm Revenue & Customs
1401021/2021	Mr Martyn Snow -v- H M Revenue And Customs
1401036/2021	Mrs Christine Shimmen -v- Hm Revenue & Customs
1401092/2021	Mr Clifford Alchin -v- Hm Revenue & Customs
1401105/2021	Mr Haydn Wood -v- Hm Revenue And Customs
1401250/2021	Mrs Linda Redding -v- Hm Revenue & Customs
1402068/2021	Mr Alexander Pady -v- HM Revenue and Customs
1402069/2021	Ms Annie Carney -v- HM Revenue and Customs
1402071/2021	Mr Michael Bach -v- HM Revenue and Customs
1402072/2021	Mrs Kathryn Barnes -v- HM Revenue and Customs
1402073/2021	Janet Chapman -v- HM Revenue and Customs
1402075/2021	Mr Steven Clayton -v- HM Revenue and Customs
1402076/2021	Mrs Elizabeth Coulter -v- HM Revenue and Customs
1402077/2021	Mrs Linda Littlewood -v- HM Revenue and Customs
1402079/2021	Mr Darren Mitchell -v- HM Revenue and Customs
1402080/2021	Miss Christine Roots -v- HM Revenue and Customs
1402082/2021	Mr James Nicholas -v- HM Revenue and Customs
1402409/2021	Mr Andrew Evans -v- HM Revenue and Customs
1402676/2021	Mrs Christine Thorne -v- HM Inspector of Taxes
1402714/2021	Ms Elizabeth Evans -v- Wilton Park, FCDO
1404027/2021	Mrs Jane Madden -v- H M Revenue and Customs
1404308/2021	Miss Cherrill Curran -v- HM Revenue and Customs
1404490/2021	Mrs Joy McNeil -v- HMRC
1404544/2021	Mr Michael Hicks -v- H M Revenue & Customs
1600041/2021	Mr Martin Ward -v- HM Revenue & Customs
1600214/2021	Mrs Helen Phillips -v- HM Revenue and Customs

1600219/2021	Mr Michael Squires -v- Her Majesty's Revenue And Customs
1600326/2021	Mr Jeremy Welsman -v- Hm Revenue And Customs
1600331/2021	Mr Alan Hodges -v- Hm Revenue And Customs
1600346/2021	Mr Robert Taylor -v- Hmrc
1600410/2021	Mr Alan Hodges -v- Hm Revenue & Customs
1600411/2021	Mrs Jacquelyn Jones -v- HMRC (her Majesty's Revenue And Customs)
1600412/2021	Mr Michael Lewis -v- H M Revenue & Customs
1600422/2021	Mrs Christine Preece -v- Hmrc
1600445/2021	Mr Stephen George -v- The Senedd Commission Welsh Parliament
1600635/2021	Mrs Annette Davies -v- The Commissioners for Her Majesty's Revenue and Customs
1601508/2021	Mrs Shirley Johnstone -v- HMRC
1601679/2021	Mrs Sian Gowing -v- HMCTS
1800191/2021	Mr Gary Wildblood -v- H M R C
1800486/2021	Mr Ian Williamson -v- Hm Revenue & Customs
1800487/2021	Mrs Norma Withers -v- H M Revenue & Customs
1800863/2021	Mrs Penelope Kay -v- Hm Revenue & Customs
1802146/2021	Mr M Dootson -v- Hmrc
1802147/2021	Mrs J Dootson -v- Hmrc
1802174/2021	Mrs L Ellis -v- Hmrc
1802255/2021	Mr K Harvey -v- HMRC
1802262/2021	Mrs L Wormley -v- Employment Skills Funding Agency
1802273/2021	Mr D Sissons -v- HMRC
1802278/2021	Mrs J Mearns -v- Hmrc
1802291/2021	Mrs L Berg -v- HMRC
1802295/2021	Mrs J Drake -v- Hmrc
1802299/2021	Mrs R Clark -v- Hmrc
1802300/2021	Mr G Naylor -v- Hmrc
1802301/2021	Mr M Whitelegge -v- Hmrc
1802305/2021	Mrs K Robinson -v- HMRC
1802319/2021	Mrs J Chapman -v- HMRC
1802323/2021	Mrs S Clay -v- HMRC
1802442/2021	Mrs denise warburton -v- HMRC
1802445/2021	Mrs Christine Wharam -v- HM Revenue & Customs, HR Shared Services
1803667/2021	Miss Hazel Thompson -v- HMRC
1803697/2021	Mrs Susan Booth -v- HM Revenue & Customs
2200603/2021	Mr Peter Briant -v- HM Revenue And Customs
2201016/2021	Mr Steve Kuti -v- Parliamentary And Health Service Ombudsman
2201130/2021	Margaret Frances Denise Devonald -v- Hm Revenue & Customs
2201135/2021	Mr Anthony Sargeant -v- Hm Revenue And Customs
2201162/2021	Mr Andrew Watson -v- HM Revenue & Customs

2201179/2021	Mr Keith Millar -v- Hm Revenue And Customs
2201325/2021	Mrs Vanita Maisuria -v- Hm Revenue & Customs
2201395/2021	Mr Anthony Leow -v- Hm Revenue & Customs
2201471/2021	Mr Ashwin Kharbanda -v- HM Revenue & Customs
2201501/2021	Mrs Elaine Critchley -v- H M Revenue & Customs
2201502/2021	Mr Jasvinder Bansal -v- H M Revenue & Customs
2201503/2021	Mr Davinder Sapal -v- HM Revenue & Customs
2201647/2021	Mr Roland Dean -v- H M Revenue & Customs
2201769/2021	Mrs Sylvia McDonald -v- H M Revenue and Customs
2203595/2021	Miss Alison Borrill -v- HMRC
2203597/2021	Ms Toni Bovill -v- HMRC
2203599/2021	Mr Mark Burfitt -v- HMRC
2203600/2021	Mr Michael Gibson -v- The Commissioners for Her Majesty's Revenue and Customs
2203601/2021	Mrs Jennifer Hughes -v- HMRC
2203603/2021	Mr Barry McGill -v- Home Office
2204145/2021	Mrs Elena Matthew -v- Her Majesty's Revenue and Customs
2204677/2021	Mrs Diane Hall -v- The Board of Trustees of the Tate Gallery & Others
2206390/2021	Mrs Tadeuinha Pacheco -v- HM Revenue and Customs
2207074/2021	Mr Alan Bennifer -v- HM Revenue & Customs
2300534/2021	Mrs Judith Sweatman -v- Hm Revenue & Customs
2300723/2021	Mr Simon Innes-Robbins -v- Imperial War Museums & Others
2300862/2021	Miss Miriam Carney -v- Hm Revenue & Customs
2300877/2021	Mr Frank Roots -v- Hmrc
2301153/2021	Keith Churchward -v- HM Revenue and Customs
2301181/2021	Mrs Glenda Philo -v- H M Revenue & Customs
2301379/2021	Miss Sarah Dennis -v- HM Revenue & Customs
2301516/2021	Mr Brian Woodfall -v- HM Revenue & Customs
2409199/2021	Mr Barry Bentley -v- The Board of Trustees of the Tate Gallery & Others
2409200/2021	Mr Roger Sinek -v- The Board of Trustees of the Tate Gallery & Others
2409201/2021	Ms Lindsey Fryer -v- The Board of Trustees of the Tate Gallery & Others
2414293/2021	Mrs Elaine Laycock -v- HM Revenue & Customs
2414864/2021	Mr Colin Gynane -v- HMRC
2500029/2021	Mr Michael Durant -v- Hm Revenue And Customs
2500407/2021	Mrs Margaret Hutchings -v- H M Revenue & Customs
2501748/2021	Mr Nigel Cook -v- GO-DCSF & DCMS
2600491/2021	Mr Raymond Rex -v- Hm Revenue And Customs
2600497/2021	Mrs June Horsewood -v- Hmrc
3204792/2021	Ms Linda Vale -v- Driver and Vehicle Standards Agency
3204900/2021	Mrs Barbara Gill -v- DVSA
3207561/2021	Mrs Azra Musa -v- Commissioners of HM Revenue & Customs

3300165/2021	Mrs Shailaja Glover -v- H M Revenue & Customs
3300564/2021	Mrs Marina Correia -v- Atalian Servest Limited
3301260/2021	Mr Graham Mann -v- HM Revenue & Customs
3303075/2021	Mr Hanns Kuster -v- H.m Revenue & Customs
3303227/2021	Mrs Lesley Ryan -v- HMRC
3303354/2021	Mr Graham Lickorish -v- HM Revenue & Customs
3303392/2021	Mr Michael Pighills -v- The Commissioners for HM Revenue & Customs
3303430/2021	Mr Audley Burey -v- Hm Revenue And Customs
3305276/2021	Mr James Summerly -v- The Commissioners for HM Revenue & Customs
3305760/2021	Mrs Susan Halewood -v- HM Revenue & Customs
3306500/2021	Mr Kenneth Moore -v- HM Revenue and Customs
3306801/2021	Ms Bernadette Edwards -v- (DVSA) Driver and Vehicle Standards
3310311/2021	Ms Linda Hunter -v- HMRC
4111222/2021	Valerie Hudson -v- HMRC
4111954/2021	Mr Alistair Hunter -v- Commissioners for HM Revenue and Customs
4112118/2021	Mrs Lorna Abercrombie -v- HMRC
4112286/2021	Ms Maureen Donnelly -v- HM Revenue & Customs
4112289/2021	Mrs Jeannette White -v- H M Revenue & Customs
4112306/2021	Ms Sañdra Bryce -v- HMRC
4112346/2021	Mr Robert Sturrock -v- HMRC